

No. 15829

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United States  
Court of Appeals  
for the Ninth Circuit

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ALBINA ENGINE & MACHINE WORKS, INC.,  
a corporation, Appellant,

vs.

AMERICAN MAIL LINE, LTD., a corporation,  
Appellee.

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Transcript of Record

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Appeal from the United States District Court  
for the District of Oregon

FILED

JAN 31 1958

PAUL P. GIBBEN, CLERK



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Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

MAUTZ, SOUTHER, SPAULDING, DENECKE  
& KINSEY,

ARNO H. DENECKE,

Board of Trade Building,  
Portland 4, Oregon,

For Appellant.

WOOD, MATTHIESSEN, WOOD & TATUM,  
ERSKINE WOOD,

1310 Yeon Building,  
Portland 4, Oregon,

For Appellee.



In the District Court of the United States  
for the District of Oregon

No. Civil 8459

AMERICAN MAIL LINE, LTD., a corporation,  
Plaintiff,

vs.

ALBINA ENGINE & MACHINE WORKS, a  
corporation, Defendant.

### COMPLAINT

The plaintiff, American Mail Line, Ltd., for cause of action against defendant, Albina Engine & Machine Works, Inc., alleges as follows:

#### I.

Plaintiff is a corporation organized and existing under the laws of the State of Delaware.

#### II.

Defendant is a corporation organized and existing under the laws of the State of Oregon.

#### III.

This is a civil action and the amount in controversy is in excess of Three Thousand Dollars (\$3,000.00), exclusive of interest and costs.

#### IV.

Heretofore plaintiff and defendant entered into a contract for the performance by defendant of certain repairs, tests and inspections on plaintiff's

steamship Java Mail, in accordance with certain specifications dated April 1, 1955, one of which provided as follows:

“Weight Testing — Port and Starboard Life Boats and Equipment. Furnish weight, 165# per person for 66 persons capacity, and accomplish weight test of each the Port and Starboard life boats, cable, davits, etc. \* \* \*”

## V.

Defendant negligently performed and breached said contract in that it did not properly perform the test on defendant's starboard lifeboat, and particularly that it—

(1) Did not properly inspect the connecting swivel link between the davit falls and the connecting hook on one end of the starboard lifeboat;

(2) Did not properly inspect the said hook;

(3) Did not securely fasten the swivel link of the davit falls for said lifeboat into the connecting hook of the boat;

(4) Did not repair the said lifeboat-hook or the said connection between it and the falls, so as to prevent an accidental parting;

(5) Did not inspect the releasing gear to determine whether it would prevent said swivel ring from coming out of the said hook;

(6) Did not repair said releasing gear to prevent the said ring from coming out of the hook;

(7) Did not warn defendant that the hook was in such condition that the said link might become disconnected therefrom;



(8) Made the connection between the davit falls and the hook so insecurely and improperly that during life-boat drill immediately after said test when the boat was being lowered the said link came out of the hook and allowed the life-boat to be precipitated into the water below.

## VI.

As a result of defendant's breach of said contract as above alleged, the lifeboat, during said life-boat drill, was violently precipitated into the water below and a seaman, Benjamin E. Nelson, who was rightfully in said boat in the course of his employment, was severely injured, suffering the loss of one leg below the knee, and other serious injuries. The accident happened on April 7, 1955.

## VII.

The said Benjamin E. Nelson sued this plaintiff, American Mail Line, Ltd., in the Circuit Court of the State of Oregon for the County of Multnomah on account of said injuries, and to recover damages therefor, in the sum of \$95,000.00 and other special damages, and this plaintiff settled said suit, after due notice to defendant Albina Engine & Machine Works, Inc., that it intended to do so, for the sum of \$35,000., and said notice notified said Albina that this plaintiff intended to seek recovery over from said Albina Engine & Machine Works, Inc., by way of indemnity; which notice was ignored. Plaintiff, on December 5, 1955, paid the said sum of \$35,000.00 to said Nelson as agreed in said settlement.

## VIII.

Plaintiff also paid to said Nelson various sums for maintenance and cure, which sums were due to Nelson under the maritime law, on account of said injuries. Said sums were paid for a period from May 4th, 1955, to November 30, 1955, 211 days at the rate of Eight Dollars (\$8.00) a day, and totaled the sum of \$1688.00.

## IX.

The liability of plaintiff to said Benjamin E. Nelson arose under what is known as the Jones Act, for failure to furnish a safe place to work, and other causes actionable under said Act, and the liability to pay maintenance and cure arose under the general maritime law, but all of said liabilities were occasioned and brought about by the breach of said contract by defendant Albina Engine & Machine Works, Inc., as above alleged, and plaintiff seeks recovery over and indemnity from said Albina Engine & Machine Works, Inc., for the amount so paid in settlement of its said liabilities.

Wherefore, plaintiff prays for judgment against defendant in the sum of \$36,688.00, with interest thereon from December 5, 1955, until paid, together with its costs and disbursements herein.

WOOD, MATTHIESSEN, WOOD  
& TATUM,

/s/ ERSKINE WOOD,

Attorneys for Plaintiff.

Duly Verified.

[Endorsed]: Filed Feb. 6, 1956.

[Title of District Court and Cause No. 8459.]

## ANSWER

In answer to plaintiff's complaint the defendant admits, denies and alleges as follows:

### I.

Admits the allegations of Paragraphs I, II and III of plaintiff's complaint.

### II.

Admits that the parties entered into a contract with the performance by the defendant of certain work on the plaintiff's steamship Java Mail in accordance with certain specifications but denies each and every other allegation of Paragraph IV and the whole thereof.

### III.

Denies the allegations of Paragraph V of plaintiff's complaint.

### IV.

Admits that the lifeboat referred to in plaintiff's complaint, during the lifeboat drill, fell into the water below and seaman Benjamin E. Nelson who was in said lifeboat was injured and suffered the loss of one leg below the knee and that said accident happened on April 7, 1955 but denies each and every other allegation of Paragraph VI and the whole thereof.

### V.

Admits that said Benjamin E. Nelson sued the plaintiff in the Circuit Court of the State of Oregon for the County of Multnomah on account of inju-

ries alleged to be incurred in said accident and that plaintiff settled said suit and that after notice to the defendant of its intention to settle said case for the sum of \$35,000, settled said case with the said Benjamin E. Nelson but the defendant denies each and every other allegation of Paragraph VII and the whole thereof.

## VI.

Defendant has no information or belief as to the allegations of Paragraph VIII and therefore denies the same.

## VII.

The defendant denies the allegations of Paragraph IX and the whole thereof.

Wherefore, defendant prays for judgment herein.

MAUTZ, SOUTHER, SPAULDING,  
DENECKE & KINSEY,

/s/ By ARNO H. DENECKE,  
Of Attorneys for Defendant.

Acknowledgment of Service Attached.

[Endorsed]: Filed March 9, 1956.

In the United States District Court  
for the District of Oregon

No. 8787

AMERICAN MAIL LINE, LTD., a corporation,  
Plaintiff,

vs.

ALBINA ENGINE & MACHINE WORKS, INC.,  
a corporation, Defendant.

### COMPLAINT

The plaintiff, American Mail Line, Ltd., for cause of action against defendant, Albina Engine & Machine Works, Inc., alleges as follows:

#### I.

Plaintiff is a corporation organized and existing under the laws of the State of Delaware.

#### II.

Defendant is a corporation organized and existing under the laws of the State of Oregon.

#### III.

This is a civil action and the amount in controversy is in excess of Three Thousand Dollars (\$3,000.00) exclusive of interest and costs.

#### IV.

Heretofore plaintiff and defendant entered into a contract for the performance by defendant of certain repairs, tests and inspections on plaintiff's steamship Java Mail, in accordance with certain

specifications dated April 1, 1955, one of which provided as follows:

“Weight Testing — Port and Starboard Life Boats and Equipment. Furnish weight, 165# per person for 66 persons capacity, and accomplish weight test of each the Port and Starboard life boats, cable, davits, etc. \* \* \*”

## V.

Defendant negligently performed and breached said contract in that it did not properly perform the test on defendant's starboard lifeboat, and particularly that it—

(1) Did not properly inspect the connecting swivel link between the davit falls and the connecting hook on one end of the starboard lifeboat;

(2) Did not properly inspect the said hook;

(3) Did not securely fasten the swivel link of the davit falls for said lifeboat into the connecting hook of the boat;

(4) Did not repair the said lifeboat-hook or the said connection between it and the falls, so as to prevent an accidental parting;

(5) Did not inspect the releasing gear to determine whether it would prevent said swivel ring from coming out of the said hook;

(6) Did not repair said releasing gear to prevent the said ring from coming out of the hook;

(7) Did not warn defendant that the hook was in such condition that the said link might become disconnected therefrom;

(8) Made the connection between the davit falls



and the hook so insecurely and improperly that during life-boat drill immediately after said test when the boat was being lowered the said link came out of the hook and allowed the life-boat to be precipitated into the water below.

## VI.

As a result of defendant's breach of said contract as above alleged, the lifeboat, during said life-boat drill, was violently precipitated into the water below and a seaman, Chan Ting Yee, who was rightfully in said boat in the course of his employment, was injured. The accident happened on April 7, 1955.

## VII.

The said Chan Ting Yee sued this plaintiff, American Mail Line, Ltd., in the Circuit Court of the State of Oregon for the County of Multnomah on account of said injuries, and to recover damages therefor, in the sum of \$30,000.00 and other special damages, and this plaintiff settled said suit, after due notice to defendant Albina Engine & Machine Works, Inc., that it intended to do so, for the sum of \$6,750.00, and said notice notified said Albina that this plaintiff intended to seek recovery over from said Albina Engine & Machine Works, Inc., by way of indemnity; which notice was ignored. Plaintiff, on or about July 3, 1956, paid the said sum of \$6,750.00 to said Chan Ting Yee as agreed in said settlement.

## VIII.

Plaintiff also paid to said Chan Ting Yee various

sums for maintenance and cure, which sums were due to Chan Ting Yee under the maritime law, on account of said injuries. Said sums were paid for a period from April 14th, 1955, to August 5th, 1955, and amounted to the total sum of \$824.00.

### IX.

The liability of plaintiff to said Chan Ting Yee arose under what is known as the Jones Act, for failure to furnish a safe place to work, and other causes actionable under said Act, and the liability to pay maintenance and cure arose under the general maritime law, but all of said liabilities were occasioned and brought about by the breach of said contract by defendant Albina Engine & Machine Works, Inc., as above alleged, and plaintiff seeks recovery over and indemnity from said Albina Engine & Machine Works, Inc., for the amount so paid in settlement of its said liabilities.

Wherefore, plaintiff prays for judgment against defendant in the sum of \$6,750.00, with interest thereon from July 3rd, 1956, plus \$824.00, maintenance and cure, together with its costs and disbursements herein.

WOOD, MATTHIESSEN, WOOD  
& TATUM,  
/s/ ERSKINE WOOD,  
Attorneys for Plaintiff.

Duly Verified.

[Endorsed]: Filed August 30, 1956.



[Title of District Court and Cause No. 8787.]

### SUMMONS

To the above named Defendant:

You are hereby summoned and required to appear and defend this action and to serve upon Wood, Matthiessen, Wood & Tatum; Erskine Wood, plaintiff's attorneys, whose address is 1310 Yeon Building, Portland 4, Oregon, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: August 30, 1956.

[Seal]                      R. DeMOTT,  
                                    Clerk,  
                    /s/ By M. CASEY,  
                                    Deputy Clerk.

Return on Service of Writ Attached.

[Endorsed]: Filed September 4, 1956.

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[Title of District Court and Cause No. 8459.]

### COURT'S BLOTTER ENTRY

Order to lodge P.T. Order by Oct. 15, 1956  
(then T).

Sep. 10, 1956.

WILLIAM G. EAST.

[Title of District Court and Cause No. 8787.]

ANSWER

In answer to plaintiff's complaint, the defendant admits, denies and alleges as follows:

I.

Admits the allegations of paragraphs I, II and III of plaintiff's complaint.

II.

Admits that the parties entered into a contract for the performance by the defendant of certain work on plaintiff's steamship Java Mail in accordance with certain specifications, but denies each and every other allegation of paragraph IV and the whole thereof.

III.

Denies the allegations of paragraph V.

IV.

Admits that the life-boat referred to in plaintiff's complaint, during the life-boat drill, fell into the water and a seaman, Chan Ting Yee, was injured in some respect and that this happened on April 7, 1955, but denies each and every other allegation of paragraph VI.

V.

Admits that said Chan Ting Yee sued the plaintiff, American Mail Line, Ltd., in the Circuit Court of the State of Oregon for the County of Multnomah on account of said injuries and that this plaintiff settled said suit after due notice to the defendant that it intended to do so and the plaintiff noti-

fied the defendant that the plaintiff intended to seek recovery over from the defendant. Defendant denies each and every other allegation of paragraph VII and the whole thereof.

VI.

Defendant has no information or belief sufficient to form an allegation as to the truth or veracity of the allegations of paragraph VIII and, therefore, denies the same.

VII.

Denies the allegations of paragraph IX and denies each and every other allegation of plaintiff's complaint and the whole thereof.

VIII.

For a further and affirmative answer and defense, the defendant alleges that the sole and proximate cause of any loss to the plaintiff was plaintiff's negligence in failing to inspect the position of the connecting swivel link of the davit falls on the connecting hook of the said life-boat before permitting the said Chan Ting Yee to enter said life-boat, and in using a connecting swivel link and life-boat hook which plaintiff knew or should have known was defective.

Wherefore, the defendant prays for judgment herein.

MAUTZ, SOUTHER, SPAULDING,  
DENECKE & KINSEY,

/s/ By ARNO H. DENECKE,

Attorneys for Defendant.

Acknowledgment of Service Attached.

[Endorsed]: Filed September 20, 1956.

[Title of District Court and Cause No. 8787.]

COURT'S BLOTTER ENTRY

July 1956. Monday, October 8, 1956.

East, J. Reporters, Ellis, Clerk, R.D.E.

Order consolidating with Civil 8459 and setting for P.T.C. on Dec. 3, 1956.

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[Title of District Court and Cause No. 8459.]

INTERROGATORIES TO PLAINTIFF AMERICAN MAIL LINE, LTD., A CORPORATION

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories are to be answered by the plaintiff American Mail Line, Ltd.:

(1) When was the connecting swivel link, which, on April 7, 1955, was on the starboard lifeboat falls of the Java Mail, installed?

(2) Was the Java Mail owned by American Mail Line, Ltd., on the date given in answer to question (1)?

(3) Were any repairs made to the connecting swivel link which was referred to in interrogatory (1)?

(4) If the answer to interrogatory (3) is yes, what were the dates of such repairs and the nature of such repairs?

(5) When was the connecting hook and releasing

gear, including the finger guards, which was on the Java Mail starboard lifeboat falls on April 7, 1955, installed?

(6) Was the Java Mail owned by American Mail Line, Ltd., on the date given in answer to question (5)?

(7) Have any repairs been made to said connecting hook and releasing gear, including finger guards?

(8) If the answer to interrogatory (7) is yes, what were the dates of said repairs and the nature of said repairs?

(9) When did American Mail Line, Ltd., its officers, agents and employees, know that the connecting swivel link would disconnect from the hook without the release of the releasing gear?

(10) At this time will the connecting swivel link still disconnect from the hook without the release of the releasing gear?

(11) When the crew of the Java Mail lowered the starboard lifeboat, at a time just prior to the accident, did any member of the crew, or American Mail Line, Ltd.'s officers or agent or ships officers know that the connecting swivel link would disconnect from the hook without the release?

(12) Did American Mail Line, Ltd., give any notice of any kind, written or oral, to Albina Engine & Machine Works, Inc., prior to the accident here involved that the connecting swivel link would disconnect from the hook without the release of the releasing gear?

(13) If the answer to the last interrogatory is yes, when was such notice given, to whom, and in what form?

MAUTZ, SOUTHER, SPAULDING,  
DENECKE & KINSEY,  
/s/ By ARNO H. DENECKE,  
Of Attorneys for Defendant.

Acknowledgment of Service Attached.

[Endorsed]: Filed Nov. 9, 1956.

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[Title of District Court and Cause No. 8787.]

#### COURT'S BLOTTER ENTRY

November Term, Monday, Dec. 3, 1956.

McColloch, C. J. Reporter, J. B. Deputy, A. N.

Entered order resetting for Pre-trial Conference  
on Feb. 4th and Trial on Feb. 12th. Nfd.

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[Title of District Court and Cause No. 8459.]

#### AMENDED COMPLAINT

The plaintiff, American Mail Line, Ltd., for cause  
of action against defendant, Albina Engine & Ma-  
chine Works, Inc., alleges as follows:

#### I.

Plaintiff is a corporation organized and existing  
under the laws of the State of Delaware.



II.

Defendant is a corporation organized and existing under the laws of the State of Oregon.

III.

This is a civil action and the amount in controversy is in excess of \$3,000.00, exclusive of interest and costs.

IV.

Heretofore plaintiff and defendant entered into a contract for the performance by defendant of certain repairs, tests and inspections on plaintiff's steamship Java Mail, in accordance with certain specifications dated April 1, 1955, one of which provided as follows:

“Weight Testing—Port and Starboard Life Boats and Equipment. Furnish weight, 165# per person for 66 persons capacity, and accomplish weight test of each the Port and Starboard life boats, cable, davits, etc . . .”

V.

Defendant negligently performed and breached said contract in that it did not properly perform the test on defendant's starboard lifeboat, and particularly that it—

- (1) Did not properly inspect the connecting swivel link between the davit falls and the connecting hook on one end of the starboard lifeboat;
- (2) Did not properly inspect the said hook;
- (3) Did not securely fasten the swivel link of the davit falls for said lifeboat into the connecting hook of the boat;

(4) Did not repair the said lifeboat-hook, including the safety guards, or the said connection between it and the falls, so as to prevent an accidental parting;

(5) Did not inspect the releasing gear to determine whether it would prevent said swivel ring from coming out of the said hook;

(6) Did not repair said releasing gear to prevent the said ring from coming out of the hook;

(7) Did not warn defendant that the hook was in such condition that the said link might become disconnected therefrom;

(8) Made the connection between the davit falls and the hook so insecurely and improperly that during lifeboat drill immediately after said test when the boat was being lowered the said link came out of the hook and allowed the lifeboat to be precipitated into the water below.

## VI.

As a result of defendant's breach of said contract as above alleged, the lifeboat, during said lifeboat drill, was violently precipitated into the water below and a seaman, Benjamin E. Nelson, who was rightfully in said boat in the course of his employment, was severely injured, suffering the loss of one leg below the knee, and other serious injuries. The accident happened on April 7, 1955.

## VII.

The said Benjamin E. Nelson sued this plaintiff, America Mail Line, Ltd., in the Circuit Court of



the State of Oregon for the County of Multnomah on account of said injuries, and to recover damages therefor, in the sum of \$95,000.00 and other special damages, and this plaintiff settled said suit, after due notice to defendant Albina Engine & Machine Works, Inc., that it intended to do so, for the sum of \$35,000, and said notice notified said Albina that this plaintiff intended to seek recovery over from said Albina Engine & Machine Works, Inc., by way of indemnity; which notice was ignored. Plaintiff, on December 5, 1955, paid the said sum of \$35,000 to said Nelson as agreed in said settlement, and in connection therewith incurred and paid the reasonable sum of \$1500 as attorney's fees.

#### VIII.

Plaintiff also paid to said Nelson various sums for maintenance and cure, which sums were due to Nelson under the maritime law, on account of said injuries. Said sums were paid for a period from May 4th, 1955, to November 30th, 1955,—211 days at the rate of \$8.00 a day, and totalled the sum of \$1688.00.

#### IX.

As a result of the acts and neglects of defendant, hereinbefore alleged, defendant's said starboard lifeboat and its davits, falls and appurtenances were severely damaged and in the repair and renewal thereof and incidental costs plaintiff expended the reasonable sum of \$3683.01, which was a reasonable amount.

#### X.

The liability of plaintiff to said Benjamin E. Nel-

son arose under what is known as the Jones Act, for failure to furnish a safe place to work, and other causes actionable under said Act, and the liability to pay maintenance and cure arose under the general maritime law and the incurrence of said attorney's fees and the costs and expenses of repairing said lifeboat, davits, falls, etc., as alleged, and all of said liabilities were occasioned and brought about by the breach of said contract by defendant Albina Engine & Machine Works, Inc., as above alleged, and plaintiff seeks recovery over and indemnity from said Albina Engine & Machine Works, Inc., for the amount so paid in settlement of its said liabilities, and for said attorney's fees and the said costs and expenses of repairing and renewing the lifeboat, davits, falls and appurtenances as alleged.

Wherefore, plaintiff prays for judgment against defendant in the sum of \$41,871.01, with interest thereon from December 5, 1955, until paid, together with its costs and disbursements herein.

WOOD. MATTHIESSEN, WOOD &  
TATUM,

/s/ ERSKINE WOOD,  
Attorneys for Plaintiff.

Verification waived and consent to filing of Amended Complaint given.

/s/ ARNO H. DENECKE,  
Attorney for Defendant.

[Endorsed]: Filed May 16, 1957.

[Title of District Court and Cause No. 8787.]

## AMENDED COMPLAINT

The plaintiff, American Mail Line, Ltd., for cause of action against defendant, Albina Engine & Machine Works, Inc., alleges as follows:

### I.

Plaintiff is a corporation organized and existing under the laws of the State of Delaware.

### II.

Defendant is a corporation organized and existing under the laws of the State of Oregon.

### III.

This is a civil action and the amount in controversy is in excess of \$3,000.00, exclusive of interest and costs.

### IV.

Heretofore plaintiff and defendant entered into a contract for the performance by defendant of certain repairs, tests and inspections on plaintiff's steamship Java Mail, in accordance with certain specifications dated April 1, 1955, one of which provided as follows:

“Weight Testing — Port and Starboard Life Boats and Equipment. Furnish weight, 165# per person for 66 persons capacity, and accomplish weight test of each the Port and Starboard life boats, cable, davits, etc . . . ”

## V.

Defendant negligently performed and breached said contract in that it did not properly perform the test on defendant's starboard lifeboat, and particularly that it——

(1) Did not properly inspect the connecting swivel link between the davit falls and the connecting hook on one end of the starboard lifeboat;

(2) Did not properly inspect the said hook;

(3) Did not securely fasten the swivel link of the davit falls for said lifeboat into the connecting hook of the boat;

(4) Did not repair the said lifeboat-hook, including the safety guards, or the said connection between it and the falls, so as to prevent an accidental parting;

(5) Did not inspect the releasing gear to determine whether it would prevent said swivel ring from coming out of the said hook;

(6) Did not repair said releasing gear to prevent the said ring from coming out of the hook;

(7) Did not warn defendant that the hook was in such condition that the said link might become disconnected therefrom;

(8) Made the connection between the davit falls and the hook so insecurely and improperly that during lifeboat drill immediately after said test when the boat was being lowered the said link came out of the hook and allowed the lifeboat to be precipitated into the water below.

VI.

As a result of defendant's breach of said contract as above alleged, the lifeboat, during said lifeboat drill, was violently precipitated into the water below and a seaman, Chan Ting Yee, who was rightfully in said boat in the course of his employment, was injured. The accident happened on April 7th, 1955.

VII.

The said Chan Ting Yee sued this plaintiff, American Mail Line, Ltd., in the Circuit Court of the State of Oregon for the County of Multnomah on account of said injuries, and to recover damages therefor, in the sum of \$30,000.00 and other special damages, and this plaintiff settled said suit, after due notice to defendant Albina Engine & Machine Works, Inc., that it intended to do so, for the sum of \$6,750.00, and said notice notified said Albina that this plaintiff intended to seek recovery over from said Albina Engine & Machine Works, Inc., by way of indemnity; which notice was ignored. Plaintiff, on or about July 3rd, 1956, paid the said sum of \$6,750.00 to said Chan Ting Yee as agreed in said settlement, and in connection therewith incurred and paid the reasonable sum of \$600.00, attorney's fees.

VIII.

Plaintiff also paid to said Chan Ting Yee various sums for maintenance and cure, which sums were due to Chan Ting Yee under the maritime law, on account of said injuries. Said sums were

paid for a period from April 14th, 1955, to August 5th, 1955, and amounted to the total sum of \$824.00.

### IX.

As a result of the acts and neglects of defendant, hereinbefore alleged, defendant's said starboard lifeboat and its davits, falls and appurtenances were severely damaged and in the repair and renewal thereof and incidental costs plaintiff expended the reasonable sum of \$3,683.01, which was a reasonable amount.

### X.

The liability of plaintiff to said Chan Ting Yee arose under what is known as the Jones Act, for failure to furnish a safe place to work, and other causes actionable under said Act, and the liability to pay maintenance and cure arose under the general maritime law and the incurrence of said attorney's fees and the costs and expenses of repairing said lifeboat, davits, falls, etc., as alleged, and all of said liabilities were occasioned and brought about by the breach of said contract by defendant Albina Engine & Machine Works, Inc., as above alleged, and plaintiff seeks recovery over and indemnity from said Albina Engine & Machine Works, Inc., for the amount so paid in settlement of its said liabilities, and for said attorney's fees and the said costs and expenses of repairing and renewing the lifeboat, davits, falls and appurtenances as alleged.

Wherefore, plaintiff prays for judgment against defendant in the sum of \$11,857.01, with interest



thereon from July 3rd, 1956, until paid, together with its costs and disbursements herein.

WOOD, MATTHIESSEN, WOOD &  
TATUM,  
/s/ ERSKINE WOOD,  
Attorneys for Plaintiff.

Verification waived—consent given to file amended complaint.

/s/ ARNO H. DENECKE  
Of Attorneys for Defendant.

[Endorsed]: Filed May 16, 1957.

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[Title of District Court and Cause Nos. 8459-8787.]

### PRETRIAL ORDER

These cases are by the consent of the parties and order of the Court consolidated for trial.

#### Agreed Facts

Plaintiff is a corporation organized and existing under the laws of the State of Delaware. Defendant is a corporation organized and existing under the laws of the State of Oregon. These are civil actions and the amount in controversy in each is in excess of \$3,000, exclusive of interest and costs.

Heretofore defendant, at the instance and request of plaintiff, performed certain work in making a lifeboat test of the starboard lifeboat of plaintiff's ship, the Java Mail. After defendant had finished its work, the boat was lifted and swung into its cradle on the boatdeck. Shortly thereafter a life-

boat drill was held by the crew of the ship and this lifeboat was partially lowered toward the water, with some members of the crew in it, and part way down, the after end of the lifeboat became detached from the "fall" holding it, and the boat with the men in it was precipitated into the water and two of the men, viz., Benjamin E. Nelson and Chan Ting Yee were injured, Nelson losing a leg as a result and suffering other injuries. Nelson and Yee sued American Mail Line and this defendant for their injuries, but later took a voluntary nonsuit as to this defendant, and American Mail Line, after first notifying defendant Albina Engine & Machine Works through its attorney that it was about to do so, and would hold said defendant liable by way of indemnity, settled the Nelson case for \$35,000, and the Yee case for \$6750.

These present cases are brought to recover those and other expenses which plaintiff incurred from defendant by way of indemnity or damages for breach of its contract.

#### Contentions of the Plaintiff

Plaintiff contends and defendant denies that said lifeboat test was done by defendant under a certain contract between plaintiff and defendant (Exhibit ——), the material part of which reads as follows:

“Weight Testing — Port and Starboard Life Boats and Equipment

Furnish weight, 165# per person for 66 persons capacity, and accomplish weight test of



each the Port and Starboard life boats, cable, davits, etc. Note: To be accomplished to satisfaction of U.S.C.G.”

and was to be accomplished pursuant to Coast Guard Rules & Regulations for Cargo and Miscellaneous Vessels, then in force, and particularly Regulation 91.25-15 of the issue of November 19, 1952.

Plaintiff contends that at the after end of said lifeboat was a hook attached to the boat, the purpose of which was to receive a link or ring attached to the davit falls, and thus permit the boat to be raised or lowered, and that there were two “finger guards” as appurtenances to said hook, the purpose of which was to prevent the link or ring slipping out of the hook when the releasing gear was locked, and that in this instance the point of the hook had become somewhat blunted and the two “finger guards” somewhat distorted so that the space between the eye of the hook and the “finger guards” was unduly wide and permitted the link to slip out from the hook even when the releasing gear was locked.

Plaintiff contends and defendant denies that defendant breached and negligently performed said contract, in not inspecting the hook at the after end of the lifeboat, and the finger guards and the link at the end of the fall that goes into said hook, and in not reporting to plaintiff that the hook was blunted and the space between the finger guards and the end of the hook was unduly wide and

would permit the link to slip out from the hook, and in not, as a part of its contract, repairing said condition; and in hooking the link of the fall into the hook in such a careless manner that the link could slip out or off the hook and permit the boat to fall, and that the foregoing acts constituted a breach of said contract, rendering defendant liable for the consequences thereof.

Plaintiff contends that as a result of defendant's acts as aforesaid, the link of the davit fall did become detached from the hook, either because of the aforesaid conditions, or because defendant's employees who last used the hook did not place the link properly therein, and because of that, when the lifeboat drill was conducted shortly thereafter, the boat fell into the water as aforesaid and injured Nelson and Yee and damaged the lifeboat davits and equipment.

That under the admiralty and maritime law and the Jones Act, plaintiff was liable to Nelson and Yee, not only in damages, but for their maintenance and cure, and that it paid Nelson \$35,000 in damages, and \$1688 maintenance and cure, which sums were reasonable and owing, and that it paid Yee \$6750 damages and \$824 maintenance and cure, which sums were reasonable, and that it incurred an expense of \$3683.01 in the repair of the lifeboat, its davits, falls, and appurtenances, all of which were occasioned by defendant's said breach and negligent performance of said contract, and which sum was reasonable. Defendant also incurred and paid the sum of \$1500 in the Nelson case as

attorney's fees, and the sum of \$600 in the Yee case as attorney's fees, which sums are reasonable. The total sums, therefore, claimed by plaintiff and defendant amount to \$50,045.01, with interest from December 5, 1955, on \$41,871.01, and from July 3, 1956, on \$8,174.

## Contentions of the Defendant

### I.

The defendant denies contentions of the plaintiff.

### II.

The defendant further contends that the defendant's only contractual obligation concerning the lifeboat involved was to load it and unload it with sand in order that it could be weight tested by the United States Coast Guard.

### III.

That the defendant had no duty to inspect the hook, ring, guards or releasing device or to report or repair any possible defect in the same.

### IV.

That the plaintiff knew or should have known of any defect which might be found to have existed in said hook, ring, guard or releasing device.

### V.

That the plaintiff was negligent in failing to inspect the aforesaid hook, ring, guard and releasing device prior to ordering the said Nelson and Yee into the lifeboat.

## VI.

That even if the defendant were found to be negligent, the plaintiff was at least a joint tortfeasor and, therefore, cannot recover indemnity against the defendant.

## Exhibits

The authenticity of the following exhibits is admitted:

## Plaintiff's Exhibits

1. United States Coast Guard Rules and Regulations for Cargo and Merchant Vessels.
2. Deposition of LaVern R. Hinrichs.
3. Contracts between the parties concerning the Java Mail.
4. Deposition of David E. R. Patterson.
5. Statement of Peter P. Flovik.
6. Statement of John J. Stene for U. S. Coast Guard (for impeachment only).
7. Release executed by Benjamin Nelson.
8. Release executed by Chan Ting Yee.
9. Invoices for repairs to lifeboat and davits.
- 9a. Bill of Albina for lifeboat test.

## Defendant's Exhibits

10. Plaintiff's answers to interrogatories.
11. Deposition of Clyde R. Toole.

## Conclusion

This pretrial order is supplementary to the pleadings in the case and the pleadings shall be considered amended by any issues or contentions raised

in this pretrial order which are not made issues or contentions by the pleadings.

Dated this 27th day of May, 1957.

/s/ ERSKINE WOOD

Of Attorneys for Plaintiff.

/s/ ARNO H. DENECKE

Of Attorneys for Defendant.

Approved:

/s/ CLAUDE McCOLLOCH.

[Endorsed]: Filed May 27, 1957.

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[Title of District Court and Cause No. 8459.]

### STIPULATION

In clarification of plaintiff's answer to defendant's interrogatory No. 10,

It Is Stipulated that the answer refers not to the date of the interrogatory or answer but to the time the ship was lying at Longview shortly after the accident undergoing repairs.

Dated this 8th day of August, 1957.

/s/ ERSKINE WOOD

Of Attorneys for Plaintiff.

/s/ ARNO H. DENECKE

Of Attorneys for Defendant.

[Endorsed]: Filed August 8, 1957.

[Title of District Court and Causes Nos. 8459-8787.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

These two cases were by order of the Court and consent of the parties consolidated for trial and are now consolidated for the purpose of these Findings of Fact and Conclusions of Law, and the Judgment to be entered thereon.

### Findings of Fact

1. Plaintiff is a corporation organized and existing under the laws of the State of Delaware.

2. Defendant is a corporation organized and existing under the laws of the State of Oregon.

3. These are civil actions and the amount in controversy in each is in excess of \$3,000, exclusive of interest and costs.

4. At the time of the events herein stated plaintiff was, and now is, the owner of the steamship Java Mail, a combined cargo and passenger ship.

5. On or about April 1, 1955, plaintiff and defendant entered into a contract by which defendant was to make weight tests on the port and starboard lifeboats of said Java Mail and their equipment, including the cables, davits, etc. Part of said equipment is a hook and two guards, or "keepers", at each end of the lifeboat, and a swivel link attached to the end of each davit fall, which link is connected with said hook when the boat is to be



lifted or lowered, and when once so connected the swivel link is not supposed to come out of the hook until released by the releasing gear provided for that purpose. It was an obligation of defendant under said contract, in making tests of the equipment, to report to plaintiff any defects discovered in said equipment, so that plaintiff could give the necessary orders to have them repaired.

6. Defendant breached its said contract in this, to-wit: In making the test on the starboard lifeboat and its equipment, defendant discovered that the said equipment was defective, faulty and dangerous, in that the swivel link could slip out and become disconnected from the said hook even when the releasing gear was locked, thus permitting that end of the boat to fall, but did not report said dangerous defect to plaintiff, nor take any steps whatever to correct it.

7. Plaintiff did not know of, and had no reason to suspect the existence of, said defect.

8. Shortly after defendant left the said lifeboat, supposedly having completed the test, the crew of the ship attempted to have a lifeboat drill with this boat. In the course of said drill, while the boat was swung outboard from the ship, and was hanging from the davit falls, the said swivel link became disconnected from the said hook because of the aforesaid defects, and the after end of the boat fell, pulling the forward end along with it, and wrecking the davits, and plunged into the water, with the



result that two of the men in the lifeboat, one named Nelson and another named Chan Ting Ye, were seriously injured, Nelson losing a leg, and the lifeboat, the davits and appurtenances were seriously damaged.

9. Plaintiff was not negligent nor at fault for not inspecting the swivel and hook and keepers before commencing the boat drill, and was not otherwise negligent in any respect.

10. The said two men commenced actions at law in the state court, which were removed to the United States District Court for Oregon, to recover damages for their said injuries because of the unseaworthiness of the said lifeboat, and plaintiff settled the Nelson case for \$35,000, and the Chan Ting Ye case for \$6,750. Besides paying these two sums to these two men, plaintiff paid Nelson \$1,688 for maintenance and cure, and Chan Ting Ye \$824 for maintenance and cure, all of which sums were reasonable and incurred by reason of defendant's breach of its said contract. Defendant also paid the sum of \$1500 in the Nelson case as attorney's fees, and the sum of \$600 in the Ye case as attorney's fees, which sums were likewise incurred because of defendant's said breach, and are reasonable. Plaintiff also incurred an expense of \$3683.01 in the repair of the lifeboat, its davits, falls and appurtenances, all of which were occasioned by defendant's said breach of its said contract, and which sum was reasonable. The defendant has stipulated that the total amount of these damages is \$50,045.01, with

interest from December 5, 1955, on \$41,871.01, and from July 3, 1956, on \$8,174. (Pretrial Order and Transcript, 73-74.)

### Conclusions of Law

The Court concludes that defendant breached its said contract with plaintiff, and that as a result of said breach plaintiff was damaged in the sum of \$50,045.01, with interest at 6% per annum from December 5, 1955, on \$41,871.01, and from July 3, 1956, on \$8,174.

Judgment for plaintiff and against defendant should be entered accordingly, with costs to plaintiff.

Dated August 14th, 1957.

/s/ CLAUDE McCOLLOCH,  
Judge.

[Endorsed]: Filed August 14, 1957.

In the United States District Court  
for the District of Oregon

Civil No. 8459

AMERICAN MAIL LINE, LTD., a corporation,  
Plaintiff,

vs.

ALBINA ENGINE & MACHINE WORKS, INC.,  
a corporation, Defendant.

Civil No. 8787

AMERICAN MAIL LINE, LTD., a corporation,  
Plaintiff,

vs.

ALBINA ENGINE & MACHINE WORKS, INC.,  
a corporation, Defendant.

### JUDGMENT

These cases having been consolidated for trial and judgment, and having come on for trial before the Court, the Honorable Claude McColloch, sitting without a jury, and the plaintiff appearing by its attorney, Erskine Wood, and the defendant appearing by its attorney, Arno H. Denecke, and the Court having heard the evidence of the parties, the oral arguments of counsel, and considered their briefs, and having made and filed its Findings of Fact and Conclusions of Law, it is now, based thereon,

Considered, Ordered and Adjudged that plaintiff recover of and from defendant the total sum of

\$50,045.01, with interest at 6% from December 5, 1955, on \$41,871.01 of said total amount, and from July 3, 1956, on \$8,174 of said total amount, together with its costs and disbursements taxed at \$178.15.

Dated August 14th, 1957.

/s/ CLAUDE McCOLLOCH,  
Judge.

[Endorsed]: Filed August 14, 1957.

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[Title of District Court and Cause Nos. 8459-8787.]

OBJECTIONS TO FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

Pursuant to Rule 52(b) of the Federal Rules of Civil Procedure, the defendant moves the Court to amend its findings as follows:

I.

Amend that part of findings of fact set forth in finding of fact No. 7 stating as follows:

“Plaintiff did not know of, and had no reason to suspect the existence of, said defect.”

And substituting therefor the following finding of fact:

“Plaintiff either knew of or should have known of the existence of said defect.”

For the reason that all the evidence is to the effect that the defect was in existence for such a period

of time that the plaintiff either must have known or should have known of the defect.

## II.

Amending paragraph 9 of the findings of fact which states as follows:

“Plaintiff was not negligent nor at fault for not inspecting the swivel and hook and keepers before commencing the boat drill, and was not otherwise negligent in any respect.”

And substituting therefor:

“The plaintiff did not inspect the swivel hook and keepers before permitting Nelson and Ye to enter the boat, and plaintiff had a duty to make such inspection, and plaintiff’s failure to make such inspection constituted negligence.”

MAUTZ, SOUTHER, SPAULDING,  
DENECKE & KINSEY,

/s/ By ARNO H. DENECKE,  
Attorneys for Defendant.

Acknowledgment of Service Attached.

[Endorsed]: Filed August 19, 1957.

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[Title of District Court and Cause Nos. 8459-8787.]

## NOTICE OF APPEAL

Notice is hereby given that the defendant Albina Engine & Machine Works, Inc., a corporation, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment

and the whole thereof entered in each of the above entitled and numbered cases on the 14th day of August, 1957.

Dated this 12th day of September, 1957.

MAUTZ, SOUTHER, SPAULDING,  
DENECKE & KINSEY,

/s/ By ARNO H. DENECKE,  
Attorneys for Defendant.

Acknowledgment of Service Attached.

[Endorsed]: Filed September 12, 1957.

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[Title of District Court and Cause Nos. 8459-8787.]

### UNDERTAKING ON APPEAL

Know All Men by These Presents, That we, Albina Engine & Machine Works, Inc., as principals, and Glens Falls Insurance Company, as surety, are held and firmly bound unto American Mail Line, Ltd., a corporation, plaintiff, in the full and just sum of Two Hundred Fifty Dollars (\$250.00) to be paid the said American Mail Line, Ltd., or its assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally by these presents. Sealed with our seals and dated this 12th day of September, 1957.

Whereas, on the 14th day of August, 1957, in the United States District Court for the District of Oregon in an action pending in said Court between said plaintiff and the said defendant, among others,

rendered a judgment for the plaintiff and against the defendant and for the plaintiff's costs herein incurred, the said defendant having filed in said Court a Notice of Appeal to reverse the judgment in the aforesaid action by appeal to the United States Court of Appeals for the Ninth Circuit.

Now, the Condition of the above obligation is such that if said defendant shall pay the costs if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if judgment is modified, then the above obligation to be void; or else to remain in full force and virtue.

ALBINA ENGINE & MACHINE  
WORKS, INC.,

/s/ By ARNO H. DENECKE,

One of Their Attorneys,  
Principals.

[Seal]      GLENS FALLS INSURANCE  
COMPANY,

/s/ By ADDISON P. KNAPP,  
Attorney,  
Surety.

Countersigned:

JEWETT, BARTON, LEAVY &  
KERN,

/s/ By ADDISON P. KNAPP,  
Resident Agent.

[Endorsed]: Filed September 12, 1957.



[Title of District Court and Cause Nos. 8459-8787.]

### STIPULATION ON EXHIBITS

It is hereby stipulated by and between the parties hereto through their respective attorneys that the original copies of all exhibits introduced in the within cause be sent to the clerk of the United States Court of Appeals for the Ninth Circuit in lieu of copies thereof.

Dated this 23rd day of September, 1957.

/s/ ERSKINE WOOD

Of Attorneys for Plaintiff.

/s/ ARNO H. DENECKE

Of Attorneys for Defendant.

[Endorsed]: Filed October 8, 1957.

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[Title of District Court and Cause Nos. 8459-8787.]

### ORDER

Based upon the stipulation of counsel and for good cause shown,

It Is Hereby Ordered that the clerk of the above-entitled Court transmit to the clerk of the United States Court of Appeals for the Ninth Circuit the originals of all exhibits introduced in the within cause.

Dated this 8th day of October, 1957.

/s/ GUS J. SOLOMON,

Judge.

[Endorsed]: Filed October 8, 1957.

[Title of District Court and Cause Nos. 8459-8787.]

### ORDER

Plaintiff's exhibits as listed in the pretrial order, 1, 2, 3, 4, 5, 7, 8, and 9, and defendant's as listed in the pretrial order, 10 and 11, were received into evidence in the above-entitled actions.

Dated this 2nd day of December, 1957.

/s/ CLAUDE McCOLLOCH,  
Judge.

/s/ ERSKINE WOOD  
Of Attorneys for Plaintiff.

/s/ ARNO H. DENECKE  
Of Attorneys for Defendant.

[Endorsed]: Filed December 3, 1957.

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[Title of District Court and Cause No. 8459.]

### CERTIFICATE OF CLERK

United States of America  
District of Oregon—ss.

I, R. DeMott, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Complaint, Answer, Interrogatories to plaintiff American Mail Line, Ltd., a Corp., Amended Complaint, Pretrial Order, Stipulation as to date referred to in Interrogatory or answer, Findings of Fact and Conclusions of Law, Judgment, Objections to Findings of Fact and Conclusions of Law, Notice of Appeal, Undertaking on Appeal, Stipula-

tion as to record, Stipulation extending time for filing record on appeal, Order extending time for filing record on appeal and docketing appeal, Stipulation on Exhibits, Order to transmit original exhibits to Court of Appeals, Order that plaintiff's Exhibits 1 to 9 be received in evidence, Transcript of docket entries, together with the documents being forwarded in Civil 8787, which is consolidated with this cause, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 8459, in which American Mail Line, Ltd., a corporation, plaintiff, and Appellee, and Albina Engine & Machine Works, Inc., a corporation, is the Defendant and Appellant; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that there is enclosed herewith reporter's transcript of testimony, May 27, 1957, filed in this office in this cause, together with exhibits 1 to 11, inclusive.

I further certify that the cost of filing the notice of appeal \$5.00, has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 3rd day of December, 1957.

[Seal]            R. DeMOTT,  
Clerk.

/s/ By MILDRED SPARGO,  
Deputy.

[Title of District Court and Cause No. 8787.]

CERTIFICATE OF CLERK

United States of America,  
District of Oregon—ss.

I, R. DeMott, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Complaint, Summons, Court Blotter entry, dated September 10, 1956, Answer, Court Blotter entry, dated October 8, 1956, Court Blotter entry, dated December 3, 1956, Amended Complaint, Transcript of docket entries, together with the documents being forwarded in Civil 8459, which is consolidated with this cause, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 8459, in which American Mail Line, Ltd., a corporation, plaintiff and Appellee, and Albina Engine & Machine Works, Inc., a corporation, is the Defendant and Appellant; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that the cost of filing the notice of appeal, \$5.00, has been paid by the Appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 3rd day of December, 1957.

[Seal]

R. DeMOTT,

Clerk,

/s/ By MILDRED SPARGO,  
Deputy.

United States District Court  
District of Oregon

No. Civil 8459

AMERICAN MAIL LINE, LTD., a corporation,  
Plaintiff,

vs.

ALBINA ENGINE & MACHINE WORKS, INC.,  
a corporation, Defendant.

No. Civil 8787

AMERICAN MAIL LINE, LTD., a corporation,  
Plaintiff,

vs.

ALBINA ENGINE & MACHINE WORKS, INC.,  
a corporation, Defendant.

# TRANSCRIPT OF PROCEEDINGS

Portland, Oregon, May 27, 1957

Before: Honorable Claude McColloch, Chief  
Judge.

Appearances: Mr. Erskine Wood, of Attorneys  
for Plaintiff. Mr. Arno H. Denecke, of Attorneys  
for Defendant. [1]\*

(Counsel for the respective parties made  
opening statements to the Court, and thereafter  
the following occurred:)

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\* Page numbers appearing at top of page of Reporter's Trans-  
cript of Record.

CLYDE TOOLE

was produced as a witness in behalf of Plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Wood): Mr. Toole, you are Port Engineer, are you not, or are you Superintendent of American Mail?

A. I am Superintending Engineer, American Mail.

Q. Speak a little louder.

A. Superintending Engineer of the American Mail at the present time, yes. I was Port Engineer.

Q. What was your position at the time of this accident?      A. Port Engineer.

Q. Are you the man who made the agreement with Albina for this lifeboat test?

A. Yes, sir. I am the man who passed the order to Albina to perform the test.

Q. Whom did you talk to?

A. Mr. Bailey.

Q. Now, Plaintiff's Exhibit 3, under date of April 1st, [2] 1955, is some specifications for repairs to the ship, for her to go through her annual inspection; is that right?

A. Yes, sir; this is the one.

Q. Then attached to that below it there is another set of specifications dated April 7th, is there not?      A. That is right.

Q. So that the Court may more easily look at these later on, it is on the second page of those spec-



(Testimony of Clyde Toole.)

fications dated April 7th that the lifeboat test is referred to, is it not?      A. Yes, sir; it is.

Q. That is the top item?

A. Item 30, yes, the top item.

Q. Now, you wrote that up after you had had the talk with Mr. Bailey, did you?

A. Yes. These were written afterwards.

Q. In fact, it was written up after the accident, was it not?      A. Yes, sir.

Q. State whether or not that carried out and embodied your oral agreement with Mr. Bailey?

A. I didn't understand, Mr. Wood.

Q. Did that written specification put into writing what you had agreed on with Mr. Bailey?

A. Yes, sir. This is right.

Q. How much was paid for that particular item? [3]      A. Beg pardon?

Q. How much did Albina charge you for that lifeboat test? I think they sent you a bill later on.

A. They sent me a bill. I believe it is \$240 or \$260.

Mr. Wood: May I have Exhibit 9-A, please. Will you hand that to the witness.

Q. Mr. Toole, on Exhibit 9-A will you please pick out the item where Albina billed you for this work, the item where they billed you for this lifeboat test?      A. Yes, sir; I have it.

Q. What page is it on?

A. It is on Page 5, Item 30, of Albina's invoices.

Q. Will you read that billing. Read it so the Court can hear it.



(Testimony of Clyde Toole.)

A. "Weight Testing—Port & Starboard Lifeboats & Equipment: Furnished weight, 165 pounds per person for 66 persons capacity, and accomplished weight test of each the port and starboard lifeboats, cable, davits, etc. Note: Accomplished to satisfaction of U. S. Coast Guard." The price is \$240.00.

Q. Does that language compare with the previous specification on Exhibit 1?

A. It is the same, Mr. Wood, other than being in the past tense. This is stating that they had accomplished the work.

Q. That is what I thought.

A. Yes, sir. [4]

Q. Both in the specifications and the bill they say they shall make the test, including the cables, the davits, and so forth, do they not?

A. Yes, sir.

Q. But on the specifications it says to be accomplished to the satisfaction of the Coast Guard?

A. Yes, sir.

Q. On the bill it says it was accomplished to the satisfaction of the Coast Guard? A. Yes, sir.

Q. If it was accomplished to the satisfaction of the Coast Guard, did that relieve them of satisfaction to you or your company under the contract?

Mr. Denecke: I object to that, your Honor, as calling for a conclusion.

The Court: You may answer.

Mr. Wood: You may answer.

(Testimony of Clyde Toole.)

A. No, we might require something further than the Coast Guard. We must satisfy the Coast Guard, but then if I were not satisfied at the time I could ask more or request them to do more.

Q. You have, I suppose, had many of these contracts with the shipyards, have you not?

A. Yes, sir.

Q. In your interpretation of the contract and in the practice [5] among shiprepair men was Albina's obligation under the contract, if they found anything wrong with either the finger guards or this hook, to report it to you or do something about it?

Mr. Denecke: Same objection.

The Court: He may answer.

A. Yes, sir. I would expect them to tell me anything they found wrong so we could correct it.

Q. If they reported anything wrong to you, you would give the order to them to correct it; is that right?

A. Yes, sir.

Q. Take this particular boat, when the boat was swung up or lifted by the falls or davits and then travels on its rollers on the davits into its cradle on the boat deck, is it handled by manpower, or does anybody touch the falls or the sling or the link or anything, or is it done automatically by machine?

A. It is done automatically all the way up with the exception of the last few inches of the last foot. Then they have a cutoff switch that stops the power to the motor so that the motor will not raise the boat any higher. Then they will go to a hand crank to bring the boat in the last foot, at which time if

(Testimony of Clyde Toole.)

the boat is going to stay there then they put gripe around it to secure it in that position.

Q. Yes. And none of that involves touching or in any way [6] changing the hook or the link?

A. No, sir.

Q. Or the davits?                      A. No, sir.

Q. Or the falls?                      A. No, sir.

Mr. Wood: That is all.

### Cross Examination

Q. (By Mr. Denecke): Mr. Toole, when did American Mail purchase the Java Mail, approximately?                      A. In 1948.

Q. At least before 1950. I noticed you had a little question in your mind?                      A. Yes.

Q. But they had it sometime before 1950?

A. Yes.

Q. Am I correct, Mr. Toole, that in your conversation with Mr. Bailey concerning the lifeboat test you said to him words to this effect: "The Coast Guard wants her weight-tested. Will you take care of it?"

A. Yes, I may have said, "We have to have a weight test on her; the Coast Guard asked me to have one," or words to that effect. [7]

Q. Mr. Toole, under whatever contract you had with Albina, Albina had no duty under that contract to inspect the releasing device, the hook and ring and the guards on the lifeboat, did they?

A. We always expect the workmen performing

(Testimony of Clyde Toole.)

the work to inform me of anything they might find wrong.

Q. That is not quite what I asked you, Mr. Toole. I am going over matters we talked about in your deposition, and I think I am correct, am I not, that it is your belief that Albina had no duty to inspect the hook or ring or guards or other things about the lifeboat to determine whether or not something was wrong?

A. Albina in her handling of everything will notice defects. A man handling any piece of equipment will notice defects. If a defect is noted, it is Albina's duty and obligation to inform me of that.

Q. All right. I want to know, though, Mr. Toole—instead of using the word “inspect,” I will ask you this: Is it your belief that under the contract you had with Albina that Albina was obligated to examine things and look them over to see whether there were any possible defects?

A. That is a rather hard question to answer. The contract never states that they are to inspect anything. If I could clarify that a little, a contract on the overhaul of a pump, I might tell them to open it up so that we may find out what [8] is wrong with the pump, knowing there is a fault. They would open it up, and after opening it up they would inform me that it was opened and ready for my inspection, for me to look at. And if I were busy elsewhere, they might tell me what was wrong with it, what they had found. I would then instruct them to make the necessary repair, whatever that repair

(Testimony of Clyde Toole.)

might be. It is Albina's obligation to the owner of a vessel to inform him of any defect he notes on the equipment that I was handling or working with—not only Albina, but any repair yard.

Q. Let me ask you if I didn't ask you this question and you didn't give me this answer—this is in the deposition taken in Mr. Wood's office—

“Q. As the Port Engineer do you consider it the duty of the repair yard in conducting a weight test—not conducting it, but trying it for the Coast Guard—to examine the ring, for example, and the hooks to see whether or not it is possible for the ring to become disengaged when it is resting in the water?

“A. No, that is not necessarily part of their work. Their responsibility is to report anything they do see wrong to me.”

Did you give that answer?                      A. Yes. [9]

Q. So do I understand that you were trying to distinguish there that they have no duty to inspect or examine—or they didn't under this particular part of the contract have any duty to inspect and examine, but you are stating that if they see something wrong then they ought to report it?

A. Yes, that is right. There is a differentiation between the word “duty” and “responsibility” in this case in my mind.

Q. Now, you were talking there before about opening up a pump. Am I correct, Mr. Toole, that what you are saying, what your meaning is, is that there



(Testimony of Clyde Toole.)

are some things that are not open or have not been opened for inspection or examination by the ship's personnel; they are covered up with plates, and so forth?      A. Yes.

Q. You are saying that Albina in such an instance, where they do open up a pump and look at an area that was not open to the ship's personnel, they then have a duty to tell you what is wrong with it if there is anything wrong with it?

A. Yes, sir; that is correct. I took a pump as an example. It is any piece of equipment that the repair yard might be handling or repairing. If they find repairs that are necessary further than I have informed or instructed them to do previously, they should tell me that that is necessary. They should tell me of the faults that they find. [10]

Q. Now, Mr. Toole, you had occasion after the accident to examine this particular hook and ring and guard, did you not?      A. Yes, sir.

Q. I think both in Portland and in Longview, did you not, or was it just in Portland?

A. No, I was in Longview, also.

Q. Did you find on such examination that it was possible for the ring to slip over the hook? Did you find on such an examination, Mr. Toole, that if this line was slack it was possible for the ring here to slip over the hook and past the guard?

A. Yes, sir.

Q. Was that condition that you saw there, Mr. Toole, one that was quite open and apparent when you looked for it?

(Testimony of Clyde Toole.)

A. When you looked for it, yes, it was very apparent that it would fall out.

Q. Am I correct, Mr. Toole, that from your examination, at least, there was no damage to the ring, hook or guard?

A. The guards were bent out of shape. The guards were spread.

Q. Was there any indication that the spreading had occurred recently?

A. I couldn't say.

Q. There was paint on the guards, was there not? [11]

A. I don't recall that.

Q. Am I correct, Mr. Toole, that anybody that looked at this hook, ring and guard would see that the guard was in such a position or the ring was of such size that you could slip it out despite the guard being there?

A. It was apparent that that would occur, yes.

Q. Captain Endresen of the U. S. Coast Guard was present and actually stated that the boat passed the weight test; isn't that correct?

A. He was present. He didn't state to me that the boat had passed the weight test. I understood that it had.

Q. Were you on the vessel when they weight tested it?

A. I don't know if I was or not. I don't believe so. I believe they weight-tested it that morning. I had been aboard ship perhaps ten minutes prior to the time the boat fell. I was in an alleyway. The



(Testimony of Clyde Toole.)

boat was not in my view at the time, but I heard the rumble of it and the crash.

Mr. Denecke: That is all. Thank you.

(Witness excused.)

Mr. Wood: I would like to inquire as to your Honor's wishes about these depositions. I rather assume you don't want them read but would prefer to read them yourself; is that correct?

The Court: Yes. You can argue from them. [12]

Mr. Wood: There is just a brief statement that Mr. Hinrichs made in his deposition which is informative. It shows how the ring was just balanced on the point of the hook. But it can be referred to in the argument. He was in the boat when it went down.

I will call Mr. Stene.

### JOHN J. STENE

was produced as a witness in behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

Q. (By Mr. Wood): Mr. Stene, at the time of this accident you were an employe of the Albina Company, weren't you? A. That is right, sir.

Q. As a rigger? A. Right.

Q. Are you still employed by the company?

A. No, I am not. I am foreman for Monarch Forge & Machine Company at the present time, of the riggers. [13]

(Testimony of John J. Stene.)

Q. I will say as a preface you testified before the United States Coast Guard about this, didn't you?

A. That is right; yes, sir.

Q. So I will explain to you that I know pretty much what you are going to say, but I want to ask these questions because the Court has to be informed of what you are going to say.

A. Yes.

Q. You were employed at that time as a rigger by Albina. You have had some experience as a seaman and in the Coast Guard, too, have you not?

A. That is right, sir.

Q. You were one of the two men in the lifeboat when the tests were conducted, weren't you?

A. Yes.

Q. And the other man was a welder of Albina?

A. Yes.

Q. He was a less experienced man than you, I take it, and was taking his directions from you?

A. That is right.

Q. Were you in the courtroom when I made an opening statement and explained how the boat was drifted back from the No. 2 falls to get sand and back and forth again?

A. Yes, sir.

Q. And finally brought back under the No. 2 davits at No. 2 [14] hatch?

A. Yes.

Q. My statement was substantially correct in that particular?

A. Pardon me for interrupting. That would be the No. 1 davit, the starboard side of No. 1.

(Testimony of John J. Stene.)

Q. Yes, but it was at No. 2 hatch? I mean by No. 2 hatch? A. Yes.

Q. Now we will come to the crucial part. After you had got rid of the sand and brought the boat back to what we will now call the No. 1 davits——

A. Yes, sir.

Q. ——the swivel or link—the two names have been given to this thing, and sometimes we call it a swivel and sometimes a link. But, anyway, you had hooked the link into the hook on the lifeboat, had you not? A. Correct.

Q. At the after end? A. Yes, sir.

Q. That is the end that gave way?

A. Yes.

Q. And the forward end was likewise rigged with the link and the hook connected by the welder; correct? A. Yes, sir.

Q. Then, having completed the actual weight test, you were [15] ready to leave the boat, weren't you?

A. No, we secured the security—what we call the trip—that consists of a bar that you swing from the port side of the boat facing forward over to the left, and you have a security pin in it and that turns the lower part of that hook over to secure so the top part of that particular swivel will lock with the top end of the hook to prevent that link from coming outside.

Q. What you call the trip is the same as what we call the releasing gear?

A. That is right. It is the same thing.

(Testimony of John J. Stene.)

Q. It is the same thing. That is in the middle of the boat on the floor?      A. Yes, sir.

Q. Now, what did you do toward placing the link properly in the bight of the hook?

A. We have to slip it in and then throw your trip to lock it. That is all there is to it. There is just three links in the end of the lower part of your davit block. All you have to do is slip it in the link and then throw your releasing gear to put safety on it.

Q. When you slipped it in and the releasing gear was thrown the hook was in an upright position, wasn't it?

A. The hook stays in the same position at all times. It is the lower part of the swivel that works on a collar. The [16] hook is absolutely permanent. It is in an upright position, but it has more of an end to it than you have there (indicating drawing on blackboard). In fact, the hook is like this (indicating).

Q. Yes.

A. And the end of that hook is supposed to meet the top part of that swivel. It works on a pivot from the releasing gear. It has one arm across the thwart of the boat and also one arm that goes back, and that moves that thing back and forth.

Q. When the releasing gear is locked, the link is supposed to be fast in the hook so it can't get out?

A. It should be right in the bight of that hook, yes, with the lines taken up tight.

(Testimony of John J. Stene.)

Q. That is the way it was when you fastened it there, was it?

A. That is right. Well, when we left the boat, the boat was bobbing in the water, and there is a lot of disturbance in the river as traffic goes up and down the river, and the boat was just laying there rocking. But the link was in the hook on both the forward and aft of the boat when we left it and came topside.

Q. You are sure, are you, that it was properly in the bight of the hook instead of being balanced on the tip of the hook, perhaps? [17]

A. We riggers always check things twice. That is a second procedure in rigging. First you make your hook-up and then you recheck it to be absolutely sure.

Q. Did you check it?

A. Yes, sir; I did. I checked both fore and aft on the boat.

Q. According to you, the link was in place and in the bight of the hook and the releasing gear was locked?

A. Absolutely, sir.

Q. But the hook had a blunt end, didn't it?

A. It did; yes, sir. I recall that.

Q. You testified about that in the Coast Guard hearing. In fact, its end was so blunt that you stated it would be possible for the link to ride on the point of the hook for some time without coming off?

A. It could be possible, if they had a slack line. If they slacked upon the line from up above and

(Testimony of John J. Stene.)

the boat could be bobbing around, that link could work out from the center of the hook.

Q. Now I am simply reviewing your testimony before the Coast Guard. The point of the hook was worn and blunted, wasn't it?      A. Yes, sir.

Q. So much so, so flat, you might say, that it was possible for the link to balance on the flat end of the hook and to [18] ride the hook for some time without coming off; isn't that right?

A. It could be possible, sir.

Q. Yes. In fact, it could ride the point of the hook all the time that the boat was lifted up to the davits and partway back again, couldn't it? That would be possible?      A. Yes, sir.

Q. Now, these finger guards that we have talked about here, or keepers, they are supposed to keep the link from slipping out, are they not?

A. Yes, sir.

Q. There is two of them, one on each side?

A. Yes, that is right.

Q. And in this instance they were bent or short so that there was quite a space between them and the hook; is that right?      A. Yes, sir.

Q. So it was possible to slip the link in there and out again even while the releasing gear was locked?      A. That is right, sir.

Q. Instead of releasing the releasing gear, as you have described, to put the link in place, wouldn't you just slip it in there like that (illustrating)?

A. Well, I could have, sir, but I don't know-



(Testimony of John J. Stene.)

it is automatic with me, when I handle lifeboats, I am so used to [19] it, that I throw the trip regardless.

Q. You throw the trip?

A. That is right, sir.

Q. You realized that this was really a defect in the equipment, didn't you?

A. Well, I have seen on shipboard a lot of lifeboats with the same hook-up. The only thing you have to watch there is that first you take it up so you get your lines taut and then you proceed—your link should be right up in the bight of that hook, and the line will be tight.

Q. That is right.

A. From there on you give the second signal and that means that she is absolutely secure. When you have a pull on her, she will never be able to drop down.

Q. While the weight is on the hook, you mean?

A. That is correct. When I left them, she was laying in the river, and that would work and work itself out. I was surprised that you ever got the boat out of the water.

Q. We got diverted from my question. You are an old seaman and you are an old Coast Guard man. You knew that when these keepers were not effective to keep the ring from slipping out that was defective, didn't you?

A. Well, sir, I did. But all I was supposed to do in that instance was to put the test to the boat, and the test was okehed by the Coast Guard inspector,



(Testimony of John J. Stene.)

and then we were told by [20] the superintendent to come topside and go home to Swan Island where we work.

Q. You were told by the Albina superintendent

A. The only thing that I do, I go according to orders.

Q. Yes. When you did notice this condition—

A. I noticed that.

Q. — and when I say “this condition” mean this space between—

A. I noticed that when I first stepped in the boat at the boat deck and rode the boat down. In fact, I was going to ride her up in the final deck there, too.

Q. You were going to ride the boat up?

A. I was going to ride the boat up when we were completely finished on the boat deck, but they took us up about 10 or 15 feet, and then they decided to leave the boat in the water. They were going to have a boat drill and fire drill. They lowered us down in the water again, and that is the condition of the boat when I left it.

Q. You did know that it shouldn't be in that condition, didn't you?

A. Yes, I knew it was very unsafe to have those things—the hook should meet the swivel, the lower part of the swivel, to lock that link in.

Q. And the finger guards should be locked?

A. That is right. [21]

Q. But you didn't feel it was your place to report that to your superintendent or anybody?

(Testimony of John J. Stene.)

A. Well, the link was up in the hook when I left it. And if they had taken the boat topside from that the accident wouldn't have happened. But they left that boat bobbing in the water, and anything could have worked loose. It is absolutely not a safe hook-up.

Q. At any rate, whether you felt it was your duty or not, you didn't report this condition to the ship or the Coast Guard or Albina, did you?

A. I didn't have anything to do with that. I was just going according to orders.

Q. When you left the boat you say it was in the water bobbing around. There was a little chop there, I suppose, in the water? A. Yes.

Q. You left right after that. I don't know whether you can answer this question or not: Do you know how long the boat remained there in the water?

A. I certainly don't. I don't know a thing about it. I went back to Swan Island with the rigger there.

Q. You left the boat, climbed up the Jacob's ladder and away you went?

A. That is right. We were ordered to go back to Swan Island, and that is where we proceeded to. That is all I [22] know about it. I don't know how the accident happened or anything about it. Nobody has ever told me a thing about it.

Q. I think I interpret your testimony right, but I am not quite sure and I would like to make sure. Your theory about this accident, then, is that be-

(Testimony of John J. Stene.)

cause the hook was blunt and because the keepers were, I will say, defective, the boat when left lying in the water was bobbing around and the falls would be slack so that it would permit this link to joggle around there and become based on the point of the hook like that?           A. Maybe.

Q. So that when it was raised up and partly lowered it slipped off. That is your idea, isn't it?

A. That is right. Well, as I recall, the end of that hook, she had sort of a forward little bend to it. I think the picture will show you that. It has got sort of a forward—I don't know; it looked like it was bent. Of course, I didn't look at it that closely. Of course, we were in a hurry there to get through with the test.

Mr. Wood: That is all.

Mr. Denecke: Would the Court mind if I asked Mr. Stene a few questions that were not asked on direct examination? That is all I would have.

Mr. Wood: I have no objection. You mean make him your [23] witness?

Mr. Denecke: Yes.

Q. (By Mr. Denecke): Mr. Stene, you have served a number of years in the Merchant Marine and in the United States Coast Guard, have you not?           A. That I have, sir.

Q. During your duties with the U. S. Coast Guard on the Great Lakes, Lake Michigan, you were in charge of lifeboats, were you not?

A. That is right. That is correct.

Q. While working for Albina you have put the

(Testimony of John J. Stene.)

weight in and taken the weight out for quite a few boat tests, weight tests?

A. That is right, sir.

Q. Now, when you brought the lifeboat back to the starboard side after you had taken the sand out and accomplished the weight test, would you state then, Mr. Stene, what happened?

A. Now this is——

Q. Have you got the time right? You have taken the sand out and the weight test has been accomplished and the Coast Guard inspector indicates he is satisfied. Then would you state in as much detail as possible what happened there.

A. Well, the ship's crew—they were working forward— [24] we had guy line painters on the boat that they were pulling us back and forth with. They pulled us back underneath the gear. And this gentlemen, Becvar, over here and myself—Mr. Becvar and I put the trip back and secured it, and I gave the signal topside.

Q. May I interrupt a minute. You tripped or fixed the releasing gear trip there?

A. That is right.

Q. Then what did you do, if you did anything, about the hooks and rings?

A. Well, I just put, you know, the link in the hook—he was forward, and then I put the safety on and put the pin in to have it secure, and I told whoever was at the controls up there on the boat deck to take up. Then they took the line tight, and then I checked the both hook-ups again to see that

(Testimony of John J. Stene.)

the link was in the hook, and it was right in the center of the hook. And I told them to take us up and they took us up about 10 or 15 feet. In fact, we were going to ride the boat up to the boat deck and get out there, because we already had orders that the test was over and we were through. But instead of that—I don't know whether it was Mr. Bailey or the Coast Guard Inspector—hollered down to me and said, "John," he said, "the test is over." He says, "You might just as well go back to Swan Island." I don't know whether that was Mr. Bailey or someone up there [25] on the deck—I didn't notice—but they was going to have a fire drill and boat drill, so they were going to leave the boat in the water, and they lowered it down to the water. And that is the position of the boat when the welder and I left it. I came out of the boat first. I climbed the Jacob's ladder and he came after me. That is the last I saw of the boat.

Q. When you left the boat, you and Mr. Beevar there, do you know whether or not the links were in place?

A. The last look I had they were just dangling you know.

Q. But the link was inside of the hook on both fore and aft?

A. Yes.

Mr. Denecke: That is all, your Honor.

(Witness excused.)

Mr. Wood: I would like to recall Mr. Toole for just one question. I don't know how important it is



CLYDE TOOLE

was recalled as a witness in behalf of the Plaintiff and was further examined and testified as follows:

Direct Examination

Q. (By Mr. Wood): Mr. Toole, you said that after the ship moved down to Longview the link and the guards, and so on, were still in the same condition, the guards down, you said.

A. They were spread.

Q. Later did you correct that so that this could not happen again?

A. We had Albina straighten those up, straighten the fingers or guards up, to prevent that from happening again. But during the test in Longview on the offshore side the links did come out of the hook again there.

Q. Yes, I know that, and Mr. Denecke knows that. But later on you did do some further work on it so that it was absolutely impossible for those to slip out, didn't you? A. Yes, sir; in Seattle.

Mr. Wood: That is all I wanted to know.

The Court: He didn't finish his answer. What did you say about Seattle?

A. In Seattle we had larger swivels put in these. We had Albina put new swivels in here after the accident. You see, the swivels they put in were smaller diameter than the original [27] swivels so they would slip past the fingers. In Seattle we had those swivels removed and larger swivels installed so that they wouldn't slip past the fingers in the future.

(Testimony of Clyde Toole.)

Mr. Wood: That is all.

Cross Examination

Q. (By Mr. Denecke): I want to ask you a couple of questions here.      A. Yes.

Q. Mr. Toole, at Longview you had Albina press together the guards?

A. Yes, that is right.

Q. Did you have Albina change the ring or the swivel at that time?

A. No. The swivels were changed in Portland prior to that time, at the time of the repair of the lifeboat, at the time of renewal of the cables.

Q. Let's get this in sequence. After the accident and still in Portland you had Albina put on new rings and swivels?      A. Yes.

Q. Were those larger or smaller than——

A. They were smaller than the original.

Q. All right. Then at Longview you had the guards pressed together more? [28]

A. Yes, that is right.

Q. Then in Seattle you replaced the rings that had been put on here in Portland with larger rings or swivels?

A. Yes, back to the original size.

Q. Because, as I understand it, at Longview you found even with the guards pushed together that because of the size of the ring it would still under some circumstances possibly slip around?

A. Yes, that is correct.

Mr. Denecke: Thank you.



Mr. Wood: That is all.

(Witness excused.)

(Thereupon a recess was taken until 1:30 P.M. of the same day, May 27, 1957, at which time Court reconvened and proceedings herein were resumed as follows): [29]

LESLIE L. BECVAR

was produced as a witness in behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Denecke): Mr. Becvar, in April of 1955, when this lifeboat fell, you were working for Albina at the time, were you not?

A. Albina, yes.

Q. And your job was what? Were you a boiler-maker?

A. Yes, I was a boilermaker. I was welder on that job.

Q. Did you get into the lifeboat with the gentleman, Stene, who testified here this morning?

A. Yes, sir.

Q. And you were with it the whole time you went around and got the sand and were in the boat when the boat was raised with the sand in and then when you unloaded the sand? A. Yes.

Q. And brought the boat back; is that correct?

A. Yes, sir.

Q. Mr. Becvar, after the sand was unloaded, after you brought the boat back, would you tell the Court what happened before you and John

(Testimony of Leslie L. Beevar.)

Stene got out. This is after the boat was back and empty.

A. After we had unloaded the sand?

Q. Right. [30]

A. We came back and I was working on the forward part and John was working the aft part.

Q. Could you speak up a little louder?

A. I was working the forward part of the lifeboat and John was working the aft part. And he said to me—I just put it back in the gooseneck. I put it back in the gooseneck there and he put his back in the gooseneck, and then he come amidships and threw the lever back in place there and used some kind of a catch or toggle pin, or something, and he threw that back in place, and then when he finished that he come down to the end I was working and he checked that. And he says, “That is okeh.” And he went back to where he was working, and he said, “Well, that is in place there.” So then he signaled and they started to raise it. Then I believe it was the Coast Guard inspector, he says, “No, leave it down there.” He says, “You fellows take the Jacob’s ladder up.” And that is what we did.

Q. Then did they have to lower the boat again?

A. Pardon?

Q. Did they have to lower the boat again for you to get out?      A. I believe so; yes, sir.

Q. When you talk about the gooseneck, Mr. Beevar, you heard the testimony this morning, did you not?      A. Yes, sir. [31]

(Testimony of Leslie L. Becvar.)

Q. Were you able to tell—when you call it a gooseneck, is that the same thing that you heard the people this morning calling a hook?

A. Yes. That is the thing where they shove the link into that, and there is a thing that locks it around there.

Q. When you got out of the lifeboat do you know the position of the ring and hook?

A. Well, my end was in.

The Court: Whom are you working for now?

A. Chicago Bridge and Iron Works.

Q. You left Albina?

A. Yes, sir. Yes, I am not working for Albina now.

The Court: You live away from here?

A. I am working out in The Dalles, Oregon, now.

The Court: All right.

Q. (By Mr. Denecke): Mr. Becvar, I think you said that when you left—when you left what was the position of the ring and the hook or the gooseneck, when you left the boat?

A. It was in the hook. It was in the hook.

Q. You are only speaking now of the forward ring?

A. That is on the end I was working on. I never checked the other end because I was more or less just working under John Stene. He was like in charge of the testing, and I was just more or less a helper to him.

(Testimony of Leslie L. Becvar.)

Q. Was the boat resting in the water when you left it? [32]      A. Yes, sir.

Mr. Denecke: That is all, your Honor.

Cross Examination

Q. (By Mr. Wood): I thought you said just now that you were not sure whether it was in the water or not when you left it.

A. I wasn't sure whether they had raised it all or not, but I think they did, sir.

Q. You think they did what?

A. They raised it up after we had got back in the boat, and then the Coast Guard inspector, he says, "No, no. You fellows climb up the Jacob's ladder."

Q. Then what was done with the boat?

A. It was left in the water.

Q. Did you step from the boat while it was in the water onto the Jacob's ladder?

A. Yes, sir.

Q. Not while the boat was suspended in the air?

A. No, sir.

Mr. Wood: That is all.

(Witness excused.) [33]

JAMES RICHARD BAILEY

was produced as a witness in behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Denecke): Mr. Bailey, in April

(Testimony of James Richard Bailey.)

of 1955, as well as at present, you were employed by Albina Engine & Machine?   A. That is true.

Q. At that time what were your general duties? That is, in April of 1955?

A. Ship superintendent.

Q. And you still occupy that position?

A. Yes.

Q. Now do you recall a conversation with Mr. Toole concerning a weight test for the lifeboats?

A. Not specifically, no.

Q. Had you done work for the weight tests before on American Mail Line ships?

A. Yes, sir.

Q. Do you recall anything that Mr. Toole said to you about the weight test on this particular boat, the Java Mail?   A. Out of the ordinary?

Q. Yes.   A. No, sir.

Q. What are the ordinary instructions as far as weight [34] testing?

A. Only that the Coast Guard was requiring a weight test on the boats and a request to carry it out.

Q. When you received such instructions from the shipowner what were your instructions to your men?

A. They are dependent quite a bit on circumstances. On this particular job it was arranged to do one boat when the ship had a favorable berthing,—that would be the starboard side to the dock—and we would do the port boat. And at a later date, when the ship was portside to the dock, we

(Testimony of James Richard Bailey.)

would do the starboard boat. And the amount of weight was worked out with the Coast Guard inspector, and I made arrangements to get the weight to the ship and the men to the ship at the time that we had established that we would perform the test.

Q. Is this correct, Mr. Bailey, that in the conduct of this you got weight on board the ship, sand, and that people working for Albina——

The Court: How much, by the way? How much sand?

Q. (By Mr. Denecke): Would you state that, Mr. Bailey?

A. They had 165 pounds of sand for each person that the boat was certified to carry. I believe that is true.

Q. Do you remember the approximate capacity of this particular boat?

A. Only from reading the depositions it was a 66-person [35] boat.

Q. So that to the best of your recollection there was 150 pounds times 66?

A. That is correct, plus 10 per cent, which makes it 165.

Q. Plus a 10-per cent safety factor there; is that right?      A. Yes.

Q. Then the Albina people arranged to get the sand, put it in the lifeboat, and then after the Coast Guard inspector was satisfied to remove the sand?      A. That is correct.

The Court: May I interrupt you again? Mr.



(Testimony of James Richard Bailey.)

Wood stated in argument that after the sand was out and the boat dropped it weighed two tons. Is that about right?

A. Oh, I would say that it would weigh approximately two tons.

The Court: Is it a steel boat?

A. Yes, sir.

The Court: How far did this boat fall?

A. I would say between 60 and 70 feet, not knowing just where it fell from, but that would be from the extreme——

Q. (By Mr. Wood): How far did you say, Mr. Bailey?

A. Mr. Wood, I said it could have fallen from 60 to 70 feet, but I don't know exactly where it fell from. Its [36] extreme travel, I would say, was 60 to 70 feet.

The Court: Can't you agree where it fell from?

Mr. Denecke: I think we do agree that it fell from the main deck.

Mr. Wood: It was the cabin deck.

Mr. Denecke: The cabin deck.

The Court: On the average how far would that be, Mr. Bailey?

A. I would say close to 40 or 45 feet, depending upon draft of the ship.

Mr. Denecke: I think we can agree on this, your Honor: That the boat was lowered down to the next deck below the boat deck.

Mr. Wood: That is right.

The Court: And fell into the water?

(Testimony of James Richard Bailey.)

Mr. Wood: And fell into the water.

The Court: And it didn't strike anything on the way?

Mr. Wood: No.

Mr. Denecke: That I don't know, your Honor.

The Court: Just these two men were in it?

Mr. Denecke: No, there were four in it, your Honor. Only two were injured.

Q. Were you there the whole morning of the morning of the accident?

A. Almost the whole morning. I wasn't there when it fell. [37]

Q. You were there at the time that the weight was in the lifeboat which was being lifted?

A. Yes, sir.

Q. Let me ask you this: Who was actually working on the lifeboat davit winch for the raising and lowering of the lifeboat?

A. The ship's crew. I can't say which member of the ship's crew.

Mr. Wood: We admit that it was the ship's crew that was on the deck manipulating the machinery that was raising the boat and lowering it.

Q. (By Mr. Denecke): Did you observe after the boat was raised after the weight test the ship's crew working around that lifeboat?

A. Yes, sir.

Q. What in general were they doing?

A. Well, we had taken, of course, the oars, the mast, the sea anchor, ladders, and all the things—they had taken them out prior to putting the

(Testimony of James Richard Bailey.)

weights in to make room for the weights. And these things were being put back. Also, the gripes were fixed up to show the Coast Guard inspector how the gripes didn't fit the boat. That is how I happened to be there.

Q. Do I understand, Mr. Bailey, that after the boat was raised after the lifeboat test the ship's crew put back in [38] all these ship's stores there?

A. Yes, sir; all the equipment.

Q. And also the ship's crew put the gripes back on in order to show that the gripes didn't fit?

A. That is correct.

Q. Now these gripes are lashings around the lifeboat to keep it from swaying back and forth; is that generally correct? A. Yes, sir.

Q. Then, as a result of the ship's crew showing that these gripes didn't fit correctly, were you instructed to have your people do some work on them?

A. Yes, sir. It was a matter of readjusting the arm of the gripe to give it a more favorable lead.

The Court: What did the gripes have to do with this accident?

Mr. Denecke: I don't think they had anything to do with it, your Honor. The purpose in bringing in that testimony was to show that the ship's crew were working around this lifeboat before the accident and after the Albina people had left.

The Court: This was before the accident?

Mr. Denecke: Yes.

Q. This was before the accident?

(Testimony of James Richard Bailey.)

A. Yes, sir. [39]

Q. And the ship's stores were put in it before the accident?      A. Yes.

Q. In other words, Mr. Bailey, the ship's crew had gotten everything out of the lifeboat before your people had even taken over so that there was room enough for the sand?

A. Excuse me, but it is customary for the ship's crew to lay the equipment out to be examined by the Coast Guard inspector at the time or sooner—that is true—and then they put it back so that it is a fully stored and equipped boat when they have their fire and boat drill.

Q. Let's see if I understand this. The ship's crew at some time had taken everything out of the lifeboat and put it there on the boat deck, I presume?      A. Yes.

Q. For inspection by the Coast Guard inspector?      A. Yes, sir.

Q. Then after you people had taken the weight out and left the lifeboat and the lifeboat was taken up and put in the davits, then the ship's crew replaced all these things?      A. That is correct.

The Court: He used the expression "annual inspection." Was this an annual inspection?

A. Yes, sir. [40]

Q. (By Mr. Denecke): Then the ship's crew later on got into this lifeboat fire drill when the accident occurred?      A. That is right.

Q. Now after the accident, Mr. Bailey, did you have occasion to examine the lifeboat in detail?

(Testimony of James Richard Bailey.)

A. Oh, yes.

Q. Am I correct that was the night after the accident or the night of the accident?

A. The late afternoon of the accident; yes, sir.

Q. Did you examine the hook and the guard and the ring, the aft hook, guard and ring on this lifeboat?

A. Yes, sir.

Q. Were you able to observe, Mr. Bailey, whether or not the position of the guard and its shape had been changed or damaged or anything very recently?

A. In my opinion it had not been, no.

Q. What was there particularly about the guard that indicated to you that that guard had been in the same position that you then observed it for some time?

A. There was no apparent twisting, no bending, as I recall. It looked like the original.

Q. Then did you later on, Mr. Bailey, have further occasion to examine the lifeboat and its actions in Longview?

A. Yes, sir.

Q. Could you tell the Court what you observed about it then? [41] You might tell the Court what was done and what you saw.

A. The boat itself at that time in Longview—we had just repaired the davits so that we could operate the boat again, and the purpose of going to Longview was to make sure that the boat operated properly. And the Coast Guard inspector was present, the same Coast Guard inspector was present, and we then floated the boat and delib-



(Testimony of James Richard Bailey.)

erately let it slack back—of course, Longview has a current in port that Portland doesn't have, but we let the boat slack back in the falls enough so that the hook that wasn't holding against the current unhooked itself while the boat was afloat. I think aside from that there was nothing extraordinary.

Q. Did you notice anything in the position of the gangway davit that would possibly have anything to do with the starboard lifeboat?

A. Yes, sir. My shipfitter and myself called attention of the Coast Guard inspector and the ship's force, too,—this is the starboard boat, isn't it?—to the starboard gangway davit, which was in a frozen position outboard from the molded lines of the ship. And with the ship at an unfavorable position you could possibly have taken the weight of the boat in lowering the boat onto it. We measured the distance between the end of the davit arm in that condition of the ship, and it was between an inch and a half and [42] two inches, I believe, of clearance. We were groping around to try and see what had caused—

Q. Mr. Bailey, I am going to see if I can restate this to see if I have it correctly. At Longview you and someone with you there from Albina—and I take it that some of the ship's personnel were also present there and the Coast Guard inspector?

A. Yes, sir.

Q. You observed that the starboard gangway davit extended out so that when the ship was in



(Testimony of James Richard Bailey.)

certain positions the lifeboat coming down, or going up, as far as that is concerned, could rest on the gangway davit and momentarily, at least, let slack in the fall. Now do I correctly state your testimony?

A. Yes, that is possible. Going up, I doubt.

Q. Well, coming down?

A. Coming down, yes. We pointed it out as a possibility.

Q. You don't know that that happened?

A. I don't know that that happened; no, sir.

Q. Mr. Bailey, is it your understanding of the instructions you received from Mr. Toole that Albina was to do anything further about the lifeboat other than provide the weight, to get the weight in and out of the lifeboat, for the weight test?

Mr. Wood: Excuse me, your Honor. I don't see how he [43] can answer that. He says he doesn't remember the conversation that he had with Mr. Toole.

The Court: He may answer if he can.

A. Mr. Wood is right. I don't remember the conversation that I had with Mr. Toole. I might say, however, that anything we felt was unsafe and it came to our attention would ordinarily be reported to Mr. Toole or to somebody with authority.

Q. (By Mr. Denecke): Whom were you to report to, the ship's crew or to Mr. Toole?

A. Our dealings are exclusively with Mr. Toole, I would say, if he is available. Quite often he has

(Testimony of James Richard Bailey.)

the chief engineer represent him when it is impossible for him to be there.

Q. Let me ask you this: As I understand your testimony, Mr. Bailey, you don't remember this specific conversation with Mr. Toole?

A. No, sir.

Q. You have commonly had instructions from Mr. Toole to weight-test or to provide weight for the tests for the Coast Guard on American Mail ships?

A. Oh, yes.

Q. You don't remember in this conversation him asking you for anything other than he usually did on a weight test?

A. No.

Q. Under those circumstances, in the ordinary request for [44] a weight test, is it your understanding of the contract that you are called upon to make any inspection of the lifeboat or the davits or the falls?

A. No, sir. It is not customary for us to—there is an inspector available at the weight test.

Q. That is the Coast Guard inspector?

A. Yes, sir.

Mr. Denecke: Could the witness be handed Plaintiff's Exhibit 3?

Q. Would you turn, Mr. Bailey, to Supplement No. 1, Page 2, Item No. 30. Now that is the specification for this particular weight test on the Java Mail, is it not?

A. Yes, sir.

Q. I think there is no question about it, but these specifications were not given to you until some days after the accident?

(Testimony of James Richard Bailey.)

A. That was customary, yes.

The Court: What?

A. That was customary, however, for that work to be written up later, at a later date.

The Court: That is not what he is talking about.

Mr. Denecke: I will ask him again, your Honor.

Q. Mr. Bailey, the supplement which you have there—it is the second part of Exhibit 3—that was not handed to you or turned over to Albina until several days after the [45] accident and after the weight test was accomplished; is that not correct?

A. That is correct.

Q. Now in the specifications which you had received previously for other ships, other annuals for American Mail, were the specifications the same, the written specifications?

A. To the best of my knowledge, no.

Q. In what respect did they differ?

A. As I recall—and, as you know, I was trying to find some in our files, and that is why I was late getting back—the item was completed at the end of the first comma, which would then read, “Furnish weight, 165 pounds per person for 66 persons capacity, and accomplish weight test of each the port and starboard lifeboats.”

Q. Am I correct that your recollection of your past specifications is that they ended there?

A. That is my recollection; yes, sir.

Mr. Denecke: That is all, your Honor.

(Testimony of James Richard Bailey.)

Cross Examination

Q. (By Mr. Wood): Mr. Bailey, do I understand you to say, not as a positive fact but that you think the previous specifications differed from this one? Is that what you mean?

A. Yes, sir. [46]

Q. Would you say the same thing about subsequent specifications?

A. I was able to find copies of subsequent specifications.

Q. What?

A. I was able to find copies of subsequent specifications in the recess at noon, and sometimes they were the same and sometimes they did differ as printed out.

Q. You did find some subsequent specifications that were exactly like this, didn't you?

A. Yes, sir.

Q. On the Java Mail, too, weren't they?

A. I didn't look in the Java Mail's folder.

Q. But none of those specifications differed in meaning, did they?

A. No, and I don't think that is a difference in meaning, particularly.

Q. You do state frankly, however—and I want to compliment you for it—that if you did notice anything was wrong in these tests you would call it to the attention of the shipowner as part of your contract, wouldn't you?

A. Oh, certainly. Whether I had a contract or not I would.

(Testimony of James Richard Bailey.)

Q. Yes. So that in this instance, if this was a defect, as we claim, and your men noticed it and said nothing about it, that would not be a performance of the contract, would it, in your opinion?

A. That would be an opinion.

Q. What?

A. I am not qualified to have an opinion on that.

Q. All right. Mr. Denecke asked you whether when you were still there on the ship, and before the accident happened, some of the crew of the ship were not working around the lifeboat after it had been lifted up into the cradle. You said some of the crew were working there about the boat?

A. Yes, sir.

Q. Among other things, they were putting the gripes on, weren't they?

A. Yes, sir.

Q. I guess the Court understands it, but the gripes are straps that go around the boat both fore and aft and fasten to the davits so that it won't swing; is that right?

A. Yes, sir.

Q. So in putting the gripes on the crew would not come anywhere near these hooks or links or dislodge them, would they?

A. Mr. Wood, I didn't hear you.

Q. I say, in putting the gripes on the crew wouldn't come anywhere near this link or hook or dislodge it, would they?

A. Well, it depends on what you consider near the gripes. The gripes go over, oh, approximately 18 inches—— [48]

(Testimony of James Richard Bailey.)

Q. I will put it like this: When the boat is swung up there into its cradle, it is still hanging with its weight on the davits, isn't it?

A. When it is brought home, it is still hanging on the davits; that is correct.

Q. So there is two tons of weight hanging on those davits fore and aft?      A. Yes.

Q. That is where this hook and link were, at each end?      A. Yes.

Q. Now you are not suggesting, are you, that because the crew put some stores in the boat or fastened the gripes that they could dislodge two tons of weight from those davits, are you?

A. No, sir; but you didn't carry it far enough. When the boat is up in position and pulled all the way back, it is hanging on the davits, but when they lower the boat down to the keel rest the boat is laying then on the keel rest. That is when they installed the gripes. And there was some discussion about how the boat fit on the keel rests, too.

Q. The boat always hangs with at least a large part of the weight on the davits, doesn't it—always?      A. No, sir.

Q. Then I have been misinformed on that. I will have to inquire about that, I guess. [49]

A. A portion of its weight, let us say, but not a large portion.

Q. A portion of it, then. Can you apportion it as to how much weight would be on the davits?

A. It depends upon how much slack the Mate



(Testimony of James Richard Bailey.)

throws back when he lays it on the keel rests, Mr. Wood. It would be different every time.

Q. Are you suggesting that it is a reasonable possibility that the crew in putting some stores in the boat might have dislodged the link from the hook?

A. No, sir.

Q. No. You suggested the possibility that the starboard gangway davit might have been projecting out enough so that when the boat was lowered the boat would momentarily hit that and perhaps take the weight off the davits and maybe do something to the hook. Was that the idea?

A. Yes, sir.

Q. That, again, you just suggest as a possibility?

A. It was only a suggestion; yes, sir.

Q. Now it is a fact, isn't it, that the Coast Guard regulations require that a lifeboat may be launched at all times free of the ship's side, even when the ship has got a list in the opposite direction up to 15 degrees? Is that a fact?

A. I am not aware of that regulation, sir.

Mr. Wood: I think that is in the testimony. I know it [50] is. It is in Patterson's deposition.

Q. Accept that as a fact. If the davits and the lifeboat and the launching gear are all so arranged that even if the ship had a 15-degree list to port still the starboard lifeboat could be launched free, that would nullify your suggestion about the gangway davit being an obstruction, wouldn't it?

(Testimony of James Richard Bailey.)

A. It was only offered as a suggestion, Mr. Wood.

Q. What?

A. It was only offered as a suggestion.

Mr. Wood: Thank you. That is all.

Mr. Denecke: No further questions.

(Witness excused.)

Mr. Denecke: Your Honor, I have no further witnesses except possibly the Coast Guard inspector, and your Honor suggested 10:00 in the morning, as I understand it.

The Court: Whatever time suits you gentlemen.

Mr. Denecke: That is fine.

Mr. Wood: I might put Mr. Toole on for a couple of short questions. [51]

### CLYDE TOOLE

was recalled as a witness in behalf of the Plaintiff and was further examined and testified as follows:

#### Direct Examination

Q. (By Mr. Wood): Mr. Toole, what do you say about whether or not the weight of the boat when it is in the cradle is still suspended mainly on the davits?

A. I think it is mainly on the davits, mainly on the cables, because if the majority of the weight were sitting on the keel you wouldn't have a tendency for it to slide out as the ship rolled. You have keepers there to keep them in. That is why they have the gripes on, to take that weight when the

(Testimony of Clyde Toole.)

ship rolls. That is, I wouldn't care to try to make a guess as to the proportion of the weight that is on the keel or the portion of it that is on the cables, but I would say by far the majority of it is on the cables, because it will just touch, just so it slides in so as to barely touch the keel.

Q. Now, just to refute any possible suggestion that you may have known about this condition of the link and the hook, did anybody report this to you? I mean before the accident?

A. You mean the possibility of——

Q. No, did anybody report the fact that the keepers were separated from the hook and the hook was blunt before the [52] accident?

A. No, sir; I knew nothing of it.

Q. The Albina men made no such report to you?

A. No, sir.

Q. And you didn't know it?

A. No, sir; I didn't know it.

Mr. Wood: That is all.

#### Cross Examination

Q. (By Mr. Denecke): As I understand, Mr. Toole, you just came on board about—did you say five or ten minutes before the accident?

A. Yes, ten or fifteen minutes prior to that; yes.

Q. Prior to the accident? A. Yes.

Mr. Denecke: That is all, your Honor.

(Witness excused.)

(Thereupon an adjournment was taken until Tuesday, May 28, 1957, at 10:00 A.M.) [53]

Portland, Oregon—May 28, 1957

(Court reconvened, pursuant to adjournment, at 10:00 A.M., and proceedings herein were resumed as follows):

The Court: What was the name of the man who was the senior in the lifeboat?

Mr. Wood: Stene.

The Court: I mean in the repair.

Mr. Wood: John Stene.

The Court: The other fellow was a welder, wasn't he?

Mr. Wood: That is correct, your Honor.

The Court: Mr. Denecke, I wrote something that is quite brief last night, and I went over it again this morning. I am going to read it to you and ask if you want to comment on it. This is my provisional impression of this case:

The question is not, it seems to me, what inspection Albina was required to make. All agree that where a defect is found it is the custom of ship repairers to inform the shipowners and that the shipowners have the right to expect that such information will be given to them. Here the defect was found by Stene. He simply did not pass the information on to his superiors. Instead, they hurried him [54] off to do other work.

Do you want to talk on that?

Mr. Denecke: Yes, your Honor. I think I can talk without consulting my notes here.

I agree, your Honor, that that was Mr. Bailey's testimony, that it was usual and customary to report these things if they did find them.

First, your Honor, I don't think that there is a legal obligation to do so. I must admit that the law is not completely certain on that. This is one of those places in the Restatement of Torts where they have what they call a caveat. Now the caveat, your Honor, if I may read it here, says this:

"The Institute expresses no opinion that a contractor who fails to exercise reasonable care to inform his employer of a dangerous condition, which he is not employed to repair, but which he discovers in the course of making the repairs agreed upon, and of which he realizes that his employer is unaware, may not be subject to the liability stated in this section."

If I may paraphrase that, as I understand, they are saying they are not expressing any opinion where the contractor—in this case the ship repairer—has no direct contractual duty to inspect or report, but he finds [55] the condition and fails to report it. And they also say here that the caveat is when the condition is such that the employer—in this case it would be the shipowner—is unaware.

There are two things we think that change the facts here, your Honor, from what the Restatement was talking about. First of all, the only testimony in here is that the condition that existed is one that had existed for some time. How long no one could say. The plaintiff's answers to interrogatories say that no repairs or changes or anything had been made to this particular device since they purchased the ship, which was in '48 or '49. The testimony of Mr. Bailey was that he saw no evi-



dence of twisting or bending or widening of these particular guards. So, your Honor, I think the fact is that this condition existed long enough so the plaintiff should have known about it.

Secondly, your Honor,—the testimony has not been presented yet, but I expect it to be, that the guard is not an essential piece of equipment to hold the falls of the lifeboat; that there are some—I don't know whether there are many or not, but there are some lifeboats which have no guards, which simply depend upon the tension of the ropes, cables and falls there to hold the ring in place. It is admitted—or I think it is admitted—that on this [56] particular one the guards, which were an additional safety device, were not as they should be. But the point I am trying to make, your Honor, is that inasmuch as the guards were not absolutely necessary anyway, that this was not the kind of a defect which would suggest itself to be one of extreme danger because the tension on the falls is the primary thing that is going to keep the hook and swivel in there.

The last point, your Honor, is that if this were a case by the seamen against Albina I would be more concerned, perhaps—I should still be concerned, but more concerned about the statements of your Honor here. However, this is a case for indemnity, and it is practically admitted here that the ship was either negligent or was an unseaworthy ship, or at least was an unseaworthy ship because of this defective device. So it was either negligence or unseaworthiness initially which was



the cause of this tragedy. Secondly, your Honor, the depositions indicate that the ship was negligent subsequent to Albina leaving in failing to make any inspection of this device before they permitted the men in the boat.

So we have a situation where the ship before Albina entered into the picture had a defective device. Then after Albina got out of the picture the ship was again negligent in failing to perform what I think the testimony [57] will be a very crucial duty that the ship and the person in charge of the lifeboat should do, and that is to inspect to see that these falls are firmly secured.

So, your Honor, in an action for indemnity it would seem that if Albina were held to be negligent in failing to report, certainly the shipowner here would be at least a joint tort-feasor and would be barred from securing any indemnity.

The Court: Do you have other testimony?

Mr. Denecke: Yes, your Honor.

The Court: Put it on. [58]

### C. H. ENDRESEN

was produced as a witness in behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

Q. (By Mr. Denecke): Captain Endresen, you are in the United States Coast Guard stationed here in the Marine Inspection Branch at Portland, Oregon, are you not?      A. That is right.

(Testimony of C. H. Endresen.)

Q. How long have you been in the Coast Guard, Captain Endresen?      A. Since '42.

Q. Prior to that time were you in the Steamboat Inspection?

A. No. I was going to sea prior to that.

Q. How long have you been in Portland?

A. In Portland since '42, except one year. I was in San Francisco one year.

Q. Since '42 has the larger part of your duties been in inspecting ships upon the various inspections?      A. Yes.

Q. Have you had occasion prior to 1955, when this accident occurred, to conduct at least over 20 or 30 lifeboat tests?

A. Yes, all kinds of them.

Q. You did conduct the lifeboat test on the Java Mail in April of 1955? [59]

A. That is right.

Q. I think we are all agreed, Captain Endresen, this accident happened in April of '55. Captain, I will hand you this book——

A. I have my own copy.

Q. I understand you have your own copy of what we refer to as Plaintiff's Exhibit 1?

A. Yes.

Q. Would you turn to Regulation 91.25-15.

A. Yes.

Q. In the first paragraph it says: "At each annual inspection the inspector shall conduct the following tests and inspections of lifesaving equip-

(Testimony of C. H. Endresen.)

ment." That inspector was you, Captain Endresen, in this particular instance?      A. Yes.

Q. If it is not you, do I understand it is some other representative of the United States Coast Guard?

A. No, I was present during the whole annual inspection.

Q. Now, Captain Endresen, did you make an inspection of this lifeboat prior to the accident?

A. I did. I was in the boat during the annual inspection checking the equipment, and so on.

Q. And is an inspection of the hook and the ring a necessary part of your inspection?

A. It goes with the inspection. [60]

Q. Did you make some examination of this ring and hook?

A. I glanced at them and noticed them, yes.

Q. Would you state to the Court very briefly, Captain Endresen—the Court has heard some testimony on this—what the weight test consists of.

A. Well, the weight test is an annual test conducted to find out if the davits, falls, blocks and so on are strong enough to stand the weight of the boat and equipment, the number of persons times 165 pounds, which gives the total weight of the boat when loaded, fully loaded.

Q. Now do you determine in your capacity as inspector whether or not this test is satisfied and passed?      A. That is right.

Q. And the ship repair yard does what in connection with the test?

(Testimony of C. H. Endresen.)

A. Well, they have an understanding or contract with the operator or the owners in regard to making repairs as a rule.

Q. Leaving out the repairs, Captain Endresen, and merely on the conduct of the test.

A. Well, no matter what is carried on it is generally between the owners and the contracting party.

Q. In this particular instance what did Albina do? See if I am correct, Captain Endresen: From your observation they put the sand in the lifeboat, and then did you give the [61] request to raise the lifeboat?      A. No.

Q. When the sand was in it?      A. No.

Q. Did you observe the raising of it?

A. Wait a while. We don't require the boat fully loaded with the sand to be raised. The boat is lowered down almost to the water and the sand is put in the boat. If they heave the boat up, that is on their own accord; not my authority. We don't believe in putting that strain on the gear.

Q. So the raising of the lifeboat with the sand in it is not necessary?

A. It doesn't concern me.

The Court: Why put the sand in, then?

A. Your Honor, it is a case of testing the falls, blocks, and so on, to see if they will hold the total load or the total capacity of the persons in the boat.

The Court: The sand is put in after the boat has been lowered to the water?

(Testimony of C. H. Endresen.)

A. Yes, sir.

The Court: Then the boat is not lifted with that added weight?           A. Sir?

The Court: The boat is not lifted, then, with that added weight? [62]

A. We don't require that.

The Court: I don't see how that tests anything. The only thing I can see you are testing is whether it would sink the boat.

Mr. Denecke: May I ask a further question? Perhaps I can clarify it.

Q. Captain Endresen, after the sand is put in the boat, am I not correct that the boat is raised enough to put tension on the falls?

A. No, you have got it wrong. The boat is lowered down almost to the water. Then sandbags are put into the boat. Then the boat is lowered into the water, and the releasing gear is tested when the boat is afloat.

The Court: It is never lifted with that added weight at all?

A. No, that is not our requirement. If they do raise the boat with the weight in, that is their own responsibility.

Q. (By Mr. Denecke): Captain Endresen, have you examined and passed lifeboats that did not have these finger guards?

A. Yes. Pardon me, now. What do you mean by finger guards?

Mr. Denecke: Could I have Exhibit 2, please, Plaintiff's Exhibit 2?



(Testimony of C. H. Endresen.)

Q. Captain, I am looking at what is marked in LaVern Hinrichs' deposition as Plaintiff's Exhibit 3, which, as you see, is a picture of the lifeboat and the hook. [63]

A. Yes.

Q. And just below the hook there are two pieces of metal standing out.

A. That is a keeper.

Q. All right. Now have you examined and passed lifeboats which did not have keepers?

A. Well, yes. But they are different types of hooks. I think there is about four different types of releasing gears on the market, or there was. Some have them and some don't.

Q. In the type that does not have them, Captain Endresen, am I correct that the tension on the falls is what keeps the swivel or ring in the hook? Is that correct?

A. That is right.

Mr. Denecke: That is all, your Honor.

#### Cross Examination

Q. (By Mr. Wood): Captain, I am referring to your testimony just now that in making the weight test they lower the boat down but not to the water and then put the sand in it.

A. That is right.

Q. And I think we are all now confused about your testimony on that point, because the testimony in this case so far has been unanimous by everybody that they had to lower the boat [64] into the water, drift it back by No. 4 hatch, load the sand in it there, drift the boat back in the water with



(Testimony of C. H. Endresen.)

the sand in it, and then lift it. Don't you remember that that was the way it was done?

A. No, I didn't see them load that boat.

Q. You didn't see them load it?

A. I didn't see them put the sand in the boat, but they did take it out at No. 3 hatch.

Q. No. 4 hatch, wasn't it?

A. No, No. 3 hatch.

Q. Anyway, aft of the place where the accident happened?

A. No, they took it up to No. 3 and discharged the boat after the tests. If they raised the boat, that was on their own account, not my account, because I don't believe in it and don't require it.

Q. Albina was making the test, wasn't it?

A. Sir?

Q. Albina was making the test, wasn't it?

A. Yes.

Q. Now didn't they do as I said? Didn't they drift the boat back along the ship's side and put some sand in aft, and then bring the boat back in the water, hook up the falls and lift it out of the water with the sand in it?

A. Well, I didn't see that. When I got down to the ship at Terminal 4 the boat was hanging clear of the water at that [65] time. I didn't see them load the boat.

Q. Had the test been completed when you got there?

A. The boat was hanging ready for me when I got down there.

(Testimony of C. H. Endresen.)

Q. Then what happened?

A. I looked over the gear to see that everything was okeh and told them to lower the boat.

Q. What?

A. Lower the boat and throw the releasing gear, which they did, and it was all over with as far as the test was concerned.

Q. Then you didn't see any weight test made at all, did you?

A. Yes, the weight test was there when I got down there that morning.

The Court: It was hanging pendant?

A. It was hanging down when I got there.

The Court: Hanging pendant with the weight in it?

Q. (By Mr. Wood): The weight had already been put in?     A. The weight was already in.

The Court: Then he saw them lower it to the water and operate the releasing gear. That is what he saw.

A. I will say this much: After the tests the ship put the lifeboat up alongside the No. 3 cargo gear and took the sandbags out. [66]

Q. (By Mr. Wood): Is that the last you saw of them?

A. That is the last I saw of them.

Q. You didn't see any of this operation, then, of bringing the boat back under the falls?

A. No, that was up to others; not me.

Q. Now, you said that this hook and the keep-

(Testimony of C. H. Endresen.)

ers, as you call them, were part of the lifeboat's equipment?      A. Yes.

Q. And you glanced at them?

A. That is right.

Q. Will you tell me where you were and where the boat was when you glanced at them?

A. The boat was in the davits and I was in the boat.

Q. You were in the boat?      A. In the boat.

The Court: And the sand was in the boat?

A. No. Pardon me, your Honor. The boat was up in the davits secured. That is when I was checking the equipment for the boats.

Q. (By Mr. Wood): You got into the lifeboat?

A. Yes.

Q. While it was suspended from the davits?

A. All the way home, with the gripes on it, secured.

Q. Was that after the test?

A. Before the test. [67]

Q. Before it was taken out of its cradle at all?

A. That is right.

Q. That is when you got in the boat?

A. Yes.

Q. And you looked at the equipment?

A. Yes.

Q. Including this hook and guards?

A. Yes.

Q. You glanced at it?      A. That is right.

Q. And did you observe——

(Testimony of C. H. Endresen.)

A. I observed. That is all I do, is observe, you know.

Q. Did you observe that the guards were lowered from the point of the hook?

A. No, I didn't. I took them to be okeh then.

Q. You didn't observe that? You didn't observe that the point of the hook was blunt?

A. I seen the whole hook.

Q. I say, you didn't observe that it was blunted, the point of the hook?

A. Oh, yes; they are a little blunt.

Q. What? A. They are a little blunt.

Q. Did you observe that this hook was more blunt than usual?

A. Oh, I wouldn't say that, no. They are all made the same [68] pattern. All hooks are made the same.

Q. But the testimony of Stene was that by wear this hook had become blunt. What do you say about that? A. I didn't hear you.

Q. I said Mr. Stene testified that by wear this hook had become more blunt than ordinary. Did you observe that, that it was extra blunt?

A. Wait a minute. They are all the same. Those hooks are all the same as far as wear is concerned. I don't see how they could wear. There is no strain on the end of the hook.

Q. You didn't observe it, anyway?

A. Yes, I looked at it, sure.

Q. I mean you didn't observe any undue bluntness?

(Testimony of C. H. Endresen.)

A. Undue, no. But I will say, as I said before, that they are all the same pattern, made all the same.

Mr. Wood: I would like to make him my own witness for a question.

Q. Mr. Stene—he was the man in the boat, and he is an old sailor and Coast Guard man—testified that the hook at the end of the lifeboat remained solid and immovable at all times. I think he is mistaken about that, and I just want to clear it up for the Court. When the releasing gear or the trip, as he called it, is thrown and the release takes place, then the hook revolving on the hinge here comes up like that, does it not (illustrating)?

A. That is right.

Q. And that enables the link to slip out?

A. That is right.

Mr. Wood: That is all.

#### Redirect Examination

Q. (By Mr. Denecke): Captain Endresen, so I may be clear, you made the inspection of the gear and equipment in the lifeboat before the sand was put in it?

A. Oh, yes.

Q. The same day, but before the sand was put in it?

A. No, not the same day.

Q. Oh, excuse me.

The Court: When?

A. On April 5th, 1955.

Q. (By Mr. Denecke): Mr. Wood asked you whether or not Albina was making the test. You

(Testimony of C. H. Endresen.)

determined whether or not the lifeboat was in accordance with the regulations, did you not?

A. That is right.

Mr. Denecke: That is all, your Honor.

Mr. Wood: That is all.

(Witness excused.) [70]

### JOHN W. DOPP

was produced as a witness in behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

Q. (By Mr. Denecke): Captain Dopp, you live in Portland, Oregon, and you are licensed all oceans as a Master?     A. Yes.

Q. How long have you been a Master?

A. I have held Master's papers for a little over 20 years—no, just 20 years. I have been Master since 1940.

Q. Are you at present acting as a relief Master and spending quite a lot of time on shore?

A. Yes. I am relief Master for West Coast Steamship Company.

Q. Can you tell us, Captain Dopp, what the duties are of a ship's officer or a seaman who is in charge of a lifeboat before the lifeboat is lowered or before men are permitted to go in the lifeboat?

A. Well, it is his duty to see that it is hooked up and that nothing will cause any delay in the davits going down; that it is all clear and that the men are in the boat as they should be before it is even started to be lowered.



(Testimony of John W. Dopp.)

Q. How should the men be in the boat, Captain Dopp?

A. Well, there is normally one man at each end, and he is to man the ropes and then he is supposed to see that the [71] releasing gear arm is locked and that the falls are clear.

Q. Are there any special duties with reference to the hooks and the releasing gear and the connection to the falls?

A. Well, everybody when they go into the lifeboat—the two men, the seamen that you send in there, is for the purpose in reality of making sure that they are connected properly, and the man in the after end of the boat, where the releasing arm is, sees that the pin is in there and that it is over there so there is no chance of it falling.

Mr. Denecke: That is all, your Honor.

Mr. Wood: That is all. No questions.

(Witness excused.)

Mr. Denecke: That is all.

The Court: I will hear you now, Mr. Wood. I will hear you in argument now.

Was this ship a freighter?

Mr. Denecke: Yes, your Honor; I think it was a C-2.

The Court: Did it carry any passengers?

Mr. Denecke: Mr. Toole indicates that it did on occasion.

Mr. Clyde Toole: It was a C-3 and carried 12 passengers.

The Court: Was it customary to carry passengers?

Mr. Toole: Yes, sir. We have accommodations for 12 passengers. [72]

Mr. Wood: As I remember, your Honor, there has never been any formal order entered that I know of consolidating these two cases for trial. Could I ask that an order be made now?

The Court: So ordered.

Mr. Wood: Before I begin my argument, which will be brief, I want to call attention to one place in the deposition of Patterson which, unless explained, might be a little confusing. Mr. Denecke, you can look with me at this, and I know you will agree on it. At the bottom of Page 9, the last line, Patterson is testifying—he was the Third Mate—and the question is, “And you were on the boat” and then he was interrupted. There should be written after “boat” the word “deck.” He never was in the boat at all. He was up on the boat deck. If the word “deck” were written after “boat” and before the word “interrupted” it would be clearer, because his next answer is, “Yes,” on the next page. He never was in the boat. He was on the boat deck.

Mr. Denecke: I would agree to that addition, your Honor.

Mr. Wood: Another thing that should be stipulated, your Honor, is that Mr. Denecke and I have agreed that the contentions in the pre-trial order that I made as to the sums paid and the amount of damages are agreed upon. If [73] there is liability, I don't have to offer proof of those amounts.

Mr. Denecke: So stipulated.

Mr. Wood: If your Honor please, it seems to me the real issues reduce themselves to fairly simply terms. Was there a contract? What was the contract? And was it breached?

First I will discuss the contract. Now it was agreed orally between Mr. Clyde Toole and Mr. Bailey that this lifeboat weight test should be made, and the specifications were written up after the accident. They were written up in the same form as had been used on previous tests by the same Albina company, and the same form as later tests, so it was the customary and usual form and was understood.

I will read it. It is on Page 2 of the specifications dated April 7, which is part of Exhibit 3, and the language is:

“Annual Inspection continued. Item No. 30.

“Weight Testing—Port and Starboard Lifeboats and Equipment.

“Furnish weight, 165 pounds per person for 66 persons capacity, and accomplish weight test of each the Port and Starboard Lifeboats, Cable, Davits, etc. [74]

“Note: To be accomplished to satisfaction of U.S.C.G.”

Now, after this work was done Albina billed the steamship company for this work, including this very test, and they used exactly the same language on their bill. I won't repeat it. The only difference is that the note is it is no longer to be accomplished to the satisfaction of the U. S. C. G., but it is now accomplished to their satisfaction. But the language is the same.

There was a test of the boat and the equipment. Captain Endresen just now stated, which I think was perfectly honest of him, that this hook and the keepers were a vital part of the boat's equipment and the safety of everybody in the boat when it was being raised or lowered depended on it, and it was a vital thing to test and inspect and report on. I won't call it quibbling, but some little controversy was indulged in about whether Albina had to inspect this equipment. I think obviously if they are making a test they have got to make at least a visual inspection. I don't mean they have got to take it to a laboratory and test the metal, but I think in making any test it is common sense to make a visual inspection. But, regardless of that, as your Honor observed, we don't have to rely on a technical inspection. The man Stene saw this defect. He was an old seaman and he was an old Coast [75] Guard man. He knew it was a defect and risky. He did nothing about it. He left the boat as quickly as he could, climbed up the Jacob's ladder and off he went. He didn't report it to anybody and nobody knew about it.

Now, it was suggested in Mr. Denecke's argument a moment ago that the ship should have known about it. I don't know whether they should or not. A boat is not used so terribly often, and I don't know how long this thing had been in this dangerous condition. Nobody else does.

The Court: As I was saying to Mr. Denecke, I don't see what difference that makes, whether they should have known about it or not. You are not say-

ing they did know about it. You are saying they should have known about it. I don't see what difference that makes. This is a contract case.

Mr. Wood: That is right.

The Court: If not an express contract, in the nature of an implied contract; perhaps even implied in law. Furthermore, I am struck with the fact that that is what you hire repairmen for, is to find things that are wrong with your equipment.

Mr. Wood: That is right. And I will add why should it be said that the ship should know about this, when Captain Endresen says he casually looked at it and didn't observe it. [76]

The Court: As between the ship and its seamen, that is another question.

Mr. Wood: Yes, that is right.

The Court: Unseaworthiness means absolute liability, which is simply saying that if it doesn't hire enough repairmen to do good repair jobs it has got to pay the bills for the seamen.

Mr. Wood: Both Mr. Bailey and Mr. Toole—I think even Stene, though I am not sure of that—but the two principals say that if a defect like this is found it is the obligation of the repairmen to tell the shipowner about it, so the shipowner can give an order and say, "Fix it up and I will pay for it." But no such report was made. It is admitted that it is the common practice—Mr. Bailey said that—that if a defect of this kind is noted it should be reported, and that makes it an implied part of this contract, if not expressed.



Now there is no question about it being the cause of the accident. Well, I will have to modify that. There are two possible causes of the accident, but there are only two. One is that Stene may be mistaken when he says he fastened the link snug up into the hook like that. He may be mistaken about that. He may have left it with the point of the hook on the link. I don't really think he did, because his testimony was explicit—and he was an honest [77] man—that he didn't do that. Then the only other possible cause is the one that he testified about, that the boat was left choppy in the water, jiggled things around there, and got in this position and then because of this fatal defect which was not reported the accident happened.

I think that it is a plain contract, a plain breach of it, and the damages were the plain consequence of it.

Now, I don't know that I need say anything about Mr. Denecke's contention that the Mate should have examined this equipment just before the boat was lowered to see that the link was in the hook, as the Captain, the last witness, said it was his duty to do.

The Court: That, again, is tort law.

Mr. Wood: That is what I was going to say. I don't think it has anything to do with the case. If it did, it is completely answered by the Supreme Court's decision in the Ryan case, where you remember the stevedores loaded these big rolls of paper in a bad fashion and they rolled over and hurt a man badly. The ship was sued and paid, and



then claimed over against the stevedore for breach of contract, just as here. And the Supreme Court upheld that claim notwithstanding the fact that the Mate of the ship had not inspected these rolls to see how they were stowed. It is just the same identical thing here. [78]

And even if it were a fact that we should have inspected it, it would not make any difference. It would be a passive neglect and would not have anything to do with the breach of the contract.

I think that is all I have to say, your Honor, unless I could explain any of these exhibits.

The Court: I am not impressed with that caveat, Mr. Denecke. As a generality, it may be all right, but here is a very serious safety matter here. Here are 66 people, including 12 lay people, men, women and children, at sea and the lifeboat turns out to be not safe. It is not safe because some things have not been done that should have been done when it was in a repair yard. I am much influenced by special circumstances of marine disasters. If a wheel comes off of an automobile—and that happened to me when I drove one too long—you may have to go in the ditch. But if you have got to take people off of a ship in extreme circumstances, and you have got a lifeboat that won't work, that is something else. That is serious.

Now go ahead. I know I am making this pretty hard for you, but I think I have to be frank with you at this stage of the case and tell you what my feelings are. But that does not mean that I won't hear you fully orally or even in writing.

Mr. Denecke: Your Honor, in view of the [79] Court's remarks, at this time I am orally not going to dwell any longer on this matter of the caveat. But I want to remind the Court again that this is a suit for indemnity, the same kind of suit that has been facing the Court here, as well as elsewhere—I mean basically the same kind—by the shipowner against the stevedore. True, it is a contractual matter. However, this Court, the Ninth Circuit and the Supreme Court have specifically said that if these are joint tort-feasors there is no indemnity.

Now, your Honor is, I am sure, familiar with Judge Fee's opinion in the Amerocean case about two months ago. I won't by any means read it all, but it says:

"That the stevedore is liable in an indemnity action where the liability of the shipowner is established solely upon the ground of unseaworthiness, while there is a finding of active negligence upon the part of the stevedore, has been accepted in many Federal Courts."

In other words, your Honor, as I understand it, he is saying that some Courts have held if the shipowner's only liability is unseaworthiness and the stevedore has been found guilty of active negligence, then many Federal Courts have held that the shipowner could recover indemnity against the stevedore. However, Judge Fee says that he is not accepting that particular premise. He says: [80]

"When two parties jointly and concurrently breach a duty each owes to a third person and damages results to him, each is liable to the full extent

thereof. Each had committed a wrongful act. Both are equally guilty of wrongful conduct.”

Now in this particular case, your Honor, I am going to assume for the moment, in view of the Court’s remarks, that Albina was negligent; that they had a legal duty to report and that they failed to report. Now that would leave us, your Honor—this case is entirely different from the Ryan case. In the Ryan case the stevedore created the unseaworthiness. There is no allegation here, of course, and the facts bear out that the unseaworthiness was not created by the ship repairmen. So here is an unseaworthy condition which the ship repairer had nothing to do with creating.

Let’s assume, then, that the ship repairer has failed in his legal duty to report to the shipowner that there was something wrong here, that there was a defect. Now, your Honor, a third act enters in here. Captain Dopp testified—I don’t think there could have been found any rebuttal to this testimony—that it is the duty of the person in charge of the lifeboat to examine and particularly to examine to see that the falls are connected up safely with [81] the lifeboat. I think without any nautical training that would be an essential and anyone would know that whether they knew anything about seamanship or not.

The shipowner now is asking for full indemnity, even though they created the unseaworthiness or

allowed it to exist, and then they failed to perform their duty of inspecting this lifeboat. And if they had inspected it, your Honor, the lifeboat would *have down* perfectly all right, as far as we know, and nothing would have occurred.

So it seems to me, your Honor, that at most the shipowner here can only rise to being a joint and concurrent tort-feasor with Albina, and if that is true the cases seem quite well established that there can be no indemnity.

Why should Albina, your Honor, bear the brunt of this because their man failed to report something when the ship at a subsequent time, when the men were going in the lifeboat, failed to perform an equal essential duty to look to see whether the lifeboat was hooked up correctly.

Mr. Wood: I haven't much more to say, your Honor. I don't need to say to your Honor this is not a tort case. This is not a case where joint tort-feasors are involved. It is a plain case of breach of contract. While it is true most of the damages sought are by way of damages in indemnity, that does not change the case at all. It is a suit for damages, not only damages caused for money we had [82] to pay out but for repairs we had to pay for caused by their breach of contract.

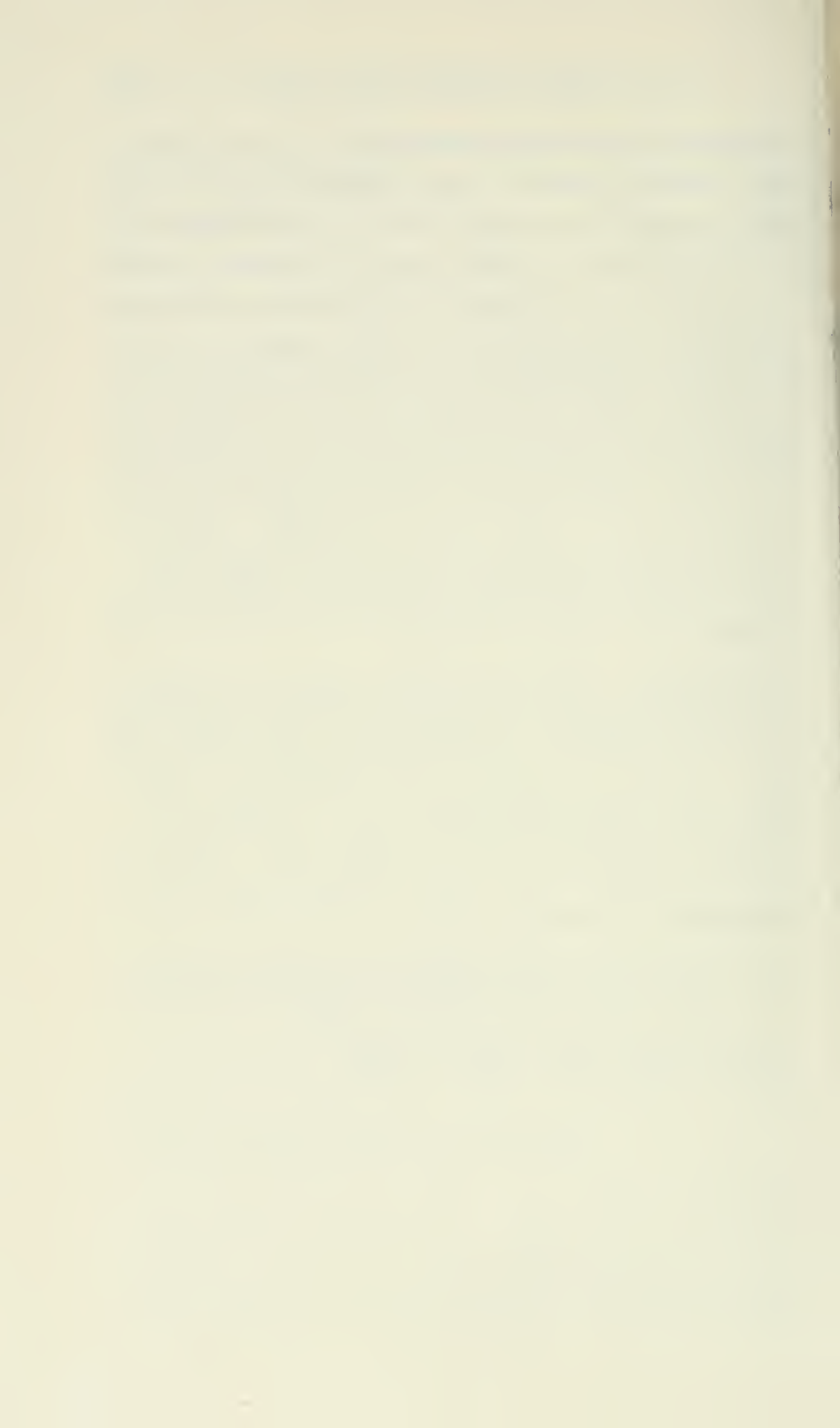
As I said before—and I won't labor the point—the Ryan case, which was a contract case where the ship was passively at fault and negligent, just as we were here, for not inspecting the things just be-

fore the boat was lowered—the Ryan case is a complete answer to this. I don't think it makes any difference, but, as a matter of fact, Mr. Patterson, the Third Mate, said that once the boat is raised up into the cradle, hanging on the hooks and from the davits, that practically its full weight is on the hook and it cannot get out of that hook if the hook is properly placed. The hook is up above them, and they can't see it. They don't look at the hooks; they rely on the fact that the man who has last placed the hook, which in this case was Albina, placed it with the link properly in it, and with the boat hanging there ever since it could not get out. They rely on that.

The Court: I will want this testimony, including the closing arguments, transcribed. Then within 30 days after Mr. Beckwith has furnished the transcript and made it available to you gentlemen, I wish you would brief your position, Mr. Denecke, and then I will let you have 30 days, Mr. Wood, after that if you wish to answer.

(Whereupon proceedings in the above matter on said day were concluded.) [83]

[Endorsed]: Filed June 12, 1957.





225-5 When made

1.25-5 (a) The annual inspection will only be made upon the written application of the master, owner, or agent of the vessel, on Form CG 833, to the Officer in Charge, Marine Inspection, at or nearest the port where the vessel is located.

### 25-10 Scope of inspection

71.25-10 (a) The annual inspection shall include an inspection of the structure, boilers, machinery and equipment. The inspection shall be such as to insure that the vessel, as regards the structure, boilers and their appurtenances, piping, main and auxiliary machinery, electrical installations, lifesaving appliances, fire-detecting and extinguishing equipment, and other equipment, is in satisfactory condition and fit for the service for which it is intended, and that it complies with the applicable regulations for such vessel, and that the radio installation is in compliance with the requirements of the Federal Communications Commission. If equipment is installed that is not required, such as fire-detecting systems, etc., such equipment shall be inspected and tested as required by Subpart 71.25 of Subchapter H (Passenger Vessels) of this chapter.

## 25-15 Lifesaving equipment

11.25-15 (a) At each annual inspection, the inspector shall conduct the following tests and inspections of lifesaving equipment.

91.25-15 (a) (1) It shall be demonstrated that the air tanks of all life-savings appliances are airtight.

91.25-15 (a) (2) If practicable, each lifeboat shall be lowered to near the water and then be loaded with its allowed capacity, evenly distributed throughout the length, and then be lowered into the water until it is afloat, and be released from the falls. In making this test, persons or dead-weight may be used. The total weight used shall be at least equal to the allowed capacity of the lifeboat considering persons to weigh 165 pounds each.

91.25-15 (a) (3) Each life preserver shall be examined to determine its serviceability. If found to be satisfactory, it will be stamped "Passed," together with the date, the port, and the inspector's initials. If not in a serviceable condition, the life preserver shall be removed from the vessel's equipment, and if beyond repair, shall be destroyed in the presence of the inspector.

91.25-15 (a) (4) All lifeboat winch electrical control apparatus shall be opened up and inspected.

91.25-15 (a) (5) Where gravity davits are installed, it shall be demonstrated that the lifeboat can be swung out and lowered from any stopped position by merely releasing the brake on the lifeboat winch. The use of force to start the davits or the lifeboat winch will not be permitted.

91.25-15 (a) (6) All other items of life-saving equipment shall be examined to determine that they are in suitable condition.

91.25-20 Fire extinguishing equipment

1.25-20 (a) At each annual inspection, the inspector shall conduct the following tests and inspections of fire extinguishing equipment:

91.25-20 (a) (1) All hand portable fire extinguishers and semiportable fire extinguishing systems shall be checked as noted in Table 91.25-20 (a) (1). In addition, the hand portable fire extinguishers and semiportable fire extinguishing systems shall be examined for excessive corrosion and general condition.

TABLE 91.25-20 (a) (1)

Type unit	Test
Soda acid.....	Discharge. Clean inside and hose thoroughly. Recharge.
Foam.....	Discharge. Clean inside and hose thoroughly. Recharge.
Pump tank (water or antifreeze).	Discharge. Clean inside and hose thoroughly. Recharge with clean water or new antifreeze.
Cartridge operated (water antifreeze or loaded stream).	If pressure cartridge is punctured, or if it weighs $\frac{1}{2}$ ounce less than amount stamped on cartridge, it shall be replaced. Remove liquid. Clean inside and hose thoroughly. Recharge with clean water or new solution or antifreeze. Insert charged cartridge.
Carbon tetrachloride..	Discharge a few strokes into a clean container. Recharge with new or discharged liquid. Keep water out of extinguisher. Ascertain that it is completely full of liquid.
Carbon dioxide.....	Weight cylinders. Recharge if weight loss exceeds 10 percent of weight of charge. Inspect hose and nozzle to be sure they are clear.
Dry chemical.....	If pressure cartridge is punctured, or if it weighs $\frac{1}{2}$ ounce less than amount stamped on cartridge, it shall be replaced. Inspect hose and nozzle to be sure they are clear. Insert charged cartridge. Ascertain that chamber contains full charge and that powder is not caked.

91.25-20 (a) (2) Fixed fire extinguishing systems shall be checked as noted in Table 91.25-20 (a)(2). In addition, all parts of the fixed fire extinguishing systems shall be examined for excessive corrosion and general conditions.



TABLE 91.25-20 (a) (2)

Type system	Test
m .....	Systems utilizing a soda solution shall have such solution replaced. In all cases, ascertain that powder is not caked.
Carbon dioxide.....	Weigh cylinders. Recharge if weight loss exceeds 10 percent of weight of charge.

91.25-20 (a) (3) On all fire extinguishing systems, all piping controls, valves, and alarms shall be checked to ascertain that the system is in operating condition. In this respect, steam smothering lines shall be checked with at least a 50 p. s. i. air pressure with the ends capped or by blowing steam through the lines at the designed pressure.

91.25-20 (a) (4) The fire main system shall be operated and the pressure checked at the most remote and highest outlets. All fire hose shall be subjected to a test pressure equivalent to the maximum pressure to which they may be subjected in service, but not less than 100 p. s. i.

#### 1.25-25 Hull equipment

91.25-25 (a) At each annual inspection, the inspector shall conduct the following tests and inspections of hull equipment:

91.25-25 (a) (1) All watertight doors shall be operated locally by manual power and also by hydraulic or electric power if so fitted. Where remote control is fitted, the doors shall also be operated by the remote control apparatus.

91.25-25 (a) (2) The remote controls of all valves shall be operated.

#### 1.25-30 Electrical engineering equipment

91.25-30 (a) For inspection procedures of Electrical Engineering equipment and systems, see Subchapter J (Electrical Engineering) of this chapter.

#### 1.25-35 Marine engineering equipment

91.25-35 (a) For inspection procedures of Marine Engineering equipment and systems, see Subchapter F (Marine Engineering) of this chapter.

#### 1.25-40 Sanitary inspection

91.25-40 (a) At each annual inspection the quarters, toilet and washing spaces, galleys, serving pantries, lockers, etc., shall be examined by the inspector to be assured that they are in a sanitary condition.

#### 1.25-45 Fire hazards

91.25-45 (a) At each annual inspection, the inspector shall examine the tank tops and bilges in the machinery spaces to see that there is no accumulation of oil which might create a fire hazard.

#### 91.25-50 Inspector not limited

91.25-50 (a) Nothing in this subpart shall be construed as limiting the inspector from making such tests or inspections as he deems necessary to be assured of the safety and seaworthiness of the vessel.

### 91.30 INSPECTION AFTER ACCIDENT

#### 91.30-1 General or partial survey

91.30-1 (a) A survey, either general or partial, according to the circumstances, shall be made every time an accident occurs or a defect is discovered which affects the safety of the vessel or the efficacy or completeness of its lifesaving appliances, fire-fighting or other equipment, or whenever any important repairs or renewals are made. The survey shall be such as to insure that the necessary repairs or renewals have been effectively made, that the material and the workmanship of such repairs or renewals are in all respects satisfactory, and that the vessel complies in all respects with the regulations in this subchapter.

### 91.35 SANITARY INSPECTIONS

#### 91.35-1 When made

91.35-1 (a) An inspection of quarters, toilet and washing spaces, serving pantries, galleys, etc., shall be made at least once in every month. If the route of the vessel is such that it is away from a United States port for more than one month, an inspection shall be conducted at least once every trip.

### 91.40 DRY DOCKING

#### 91.40-1 When dry docked

91.40-1 (a) All vessels shall be placed in dry dock or hauled out for examination within the periods set forth in this paragraph depending upon the service.

91.40-1 (a) (1) Vessels whose operations in salt water service aggregate more than 6 months in a calendar year—once in each year.

91.40-1 (a) (2) Vessels whose operations in salt water service aggregate 6 months or less in a calendar year—once in each 2 years.

91.40-1 (a) (3) Vessels whose operations are confined exclusively to fresh water—once in each 5 years.

#### 91.40-5 Notice by owner

91.40-5 (a) The master, owner, or agent shall notify the Officer in Charge, Marine Inspection, when any vessel is to be placed on a dry dock in order that an examination of the underwater portion



PLAINTIFF'S EXHIBIT No. 2

[Title of District Court and Cause Nos. 8459-8787.]

DEPOSITION OF LaVERN R. HINRICHS

taken in behalf of Plaintiff.

Be It Remembered That, pursuant to the stipulation of counsel for the respective parties hereinafter set forth, the deposition of LaVern R. Hinrichs was taken in behalf of [1]\* the Plaintiff in the above-entitled consolidated causes before John S. Beckwith, a Notary Public for Oregon and an Official Reporter of the above-entitled Court, on Wednesday, December 5, 1956, beginning at the hour of 3:00 p.m., at the law offices of Messrs. Wood, Matthiessen, Wood & Tatum, 1310 Yeon Building, Portland, Oregon.

Appearances: Mr. Erskine Wood, of Attorneys for Plaintiff. Mr. Arno H. Denecke, of Attorneys for Defendant.

Mr. Wood: It is hereby stipulated that the testimony of this witness, LaVern R. Hinrichs, may be taken before John S. Beckwith, a Notary Public for Oregon and an Official Reporter of the above-entitled Court, at this time and place; that said deposition shall be transcribed and may be read in evidence at the time of trial the same as if the witness were present and testifying in person, all objections being reserved to the time of trial except as

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\* Page numbers appearing at top of page of Original Deposition.

Plaintiff's Exhibit No. 2—(Continued)  
(Deposition of LaVern R. Hinrichs.)

to leading questions or as to the competency of the questions.

It is further stipulated that the reading of the deposition and the signature of the witness are waived, subject to his approval.

Mr. Denecke: So stipulated. [2]

### LaVERN R. HINRICHS

was produced as a witness in behalf of the Plaintiff and, having been first duly sworn by the Notary, was examined and testified as follows:

#### Direct Examination

Q. (By Mr. Wood): Mr. Hinrichs, you may state your full name.

A. LaVern Richard Hinrichs.

Q. Your age?            A. 29.

Q. Your address?

A. 11213 Lake Steilacoom Drive, Southwest Tacoma, Washington.

Q. Are you married?        A. Yes.

Q. Have you any children?    A. Yes.

Q. How many?            A. Two.

Q. You are a seaman by occupation, are you not?            A. Yes.

Q. How long have you been going to sea?

A. Since 1945, except for two years I was in the Army, from '51 to '53.

Q. You are a seaman at the present time?

A. Yes, I am.

Q. With the rating of A.B.? [3]



Plaintiff's Exhibit No. 2—(Continued)

(Deposition of LaVern R. Hinrichs.)

A. A.B., lifeboat man.

Q. Are you a certificated lifeboat man?

A. With your A.B. papers you have to hold a lifeboat ticket.

Q. At present you are attached to the Steamship China Mail, aren't you?      A. Yes, I am.

Q. Here in this port at present?      A. Yes.

Q. You are about to sail from here tomorrow, I think?      A. Yes.

Q. At the time that the No. 1 lifeboat fell on the Java Mail, which I believe was April 7th, 1955, you were present on that occasion, weren't you?

A. Yes, I was.

Q. The lifeboat fell during the course of lifeboat drill, didn't it?      A. Yes.

Q. And before that there had been a weight test made on it by the Albina Engine & Machine Works people, had there not?

A. Yes, there was a test on it.

Q. Were you working about the decks during that weight test?

A. Through some of it, yes.

Q. What part of that weight test did you notice and remember? [4]

A. The main part of it was when the lifeboat was back at No. 4 and they were taking the sandbags out of it with the winch.

Q. That is, they had presumably lifted the boat with the sand in it, which you don't particularly

Plaintiff's Exhibit No. 2—(Continued)

(Deposition of LaVern R. Hinrichs.)

remember, and then they had taken it back to No. 4 to discharge the sand; is that right?

A. That is right.

Q. That is what you saw?

A. That is what I saw, the discharging of the sand.

Q. Then was the boat brought back after the sand was discharged and put under the davits?

A. Yes.

Q. Did you see Albina men in the boat at that time, when it was brought back under the davits?

A. Yes.

Q. I don't mean that you observed particularly how they hooked it on, or anything like that, but in general did you see them hooking the boat falls onto the hooks of the boat?

A. Well, I mean I didn't actually look down and look at them, but I mean they were in the boat underneath the falls so therefore they was hooking it up.

Q. Do you recollect any conversation from anybody on the deck down to the Albina men in the boat about hooking it up?

A. Well, I am not sure, but I think it was Whitey Hansen—— [5]

Q. Who is Whitey Hansen?

A. He was an A.B. on the ship, my watch partner.

Q. What did he say?

A. Jokingly he hollered down to the guy in the

Plaintiff's Exhibit No. 2—(Continued)  
(Deposition of LaVern R. Hinrichs.)

boat and he says, "Be sure and hook it up good." And this other fellow says, "Don't worry about Shorty"—I believe the word was Shorty——

Q. Who was the other fellow?

A. I don't know who he was.

Q. I mean was he a man in the boat or a man on the deck?

A. I believe he was on the deck, but he wasn't one of the crew.

Q. He was an Albina man, was he?

A. Must have been an Albina man.

Q. What did he say?

A. He said, "Don't worry about Shorty. He will hook it up. He is an old seaman."

Q. Shorty being one of the men in the boat?

A. That is who he referred to.

Q. Do you remember the boat being lifted up and swung into the cradle?

A. No. I walked off right after that. It was in the process of coming up when I walked away.

Q. You walked away. And when you came back what next did you have to do with the boat? [6]

A. Well, I turned to and put the gripes on, secured the boat in the proper manner for the lifeboat drill. I put the gripes on the after end of the boat.

Q. When you came back was the boat already swung into the cradle?

A. Yes, it was. It was already in the cradle.

Q. You helped put the gripes on?

A. Yes, on the after end.

Plaintiff's Exhibit No. 2—(Continued)  
(Deposition of LaVern R. Hinrichs.)

Q. By the way, when the lifeboat is in the cradle, swung in there, is the weight of the boat still on the hooks? Is the boat still suspended with its weight on the hooks?     A. Yes.

Q. Even after it is in the cradle?

A. Yes, there is weight on the hooks after she is in the cradle.

Q. Now after you had secured the gripes or helped put the gripes on, then I believe you went away for coffee, didn't you?

A. It was coffee time, yes.

Q. Then after you came back from coffee time what next occurred?

A. Well, they blew the signal for fire drill, which I went to, and then after fire drill they blew the signal for lifeboat drill.

Q. You came to that lifeboat drill? [7]

A. Yes.

Q. What particularly did you have to do with it first?     A. In what respect?

Q. I believe you told me that the Mate told you to get in the boat and check the plug, or something like that.

A. Yes. I was standing there and the Third Mate says, "Get in the boat and check the plug."

Q. Did you do it?     A. Yes, I did.

Q. Was the boat still in the cradle at that time, or do you remember?

A. No, I believe it was just swung out enough

Plaintiff's Exhibit No. 2—(Continued)

(Deposition of LaVern R. Hinrichs.)

so that you could step into the boat without having to crawl clear up on the davit to get in.

Q. Then after you checked the plug—so that we all understand that, what is the plug for?

A. Well, it is so that you can drain the water out of the boat when you bring it aboard, if there is any water in it.

Q. So before putting it back in the water you would have to be sure the plug was back in place?

A. Yes.

Q. Is that what you were doing?

A. Yes.

Q. Then after the plug was checked by you was the boat lowered away? [8]

A. Yes, they started to lower the boat away.

Q. Did you remain in it? A. Yes, I did.

Q. Who was with you?

A. At the other end was Lord Nelson.

Q. Which end were you in?

A. The after end.

Q. Is Lord Nelson the man who had his leg hurt and amputated? A. Yes.

Mr. Denecke: "Lord," I take it, is a nickname?

A. That is a nickname. I don't know his first name.

Q. (By Mr. Wood): Now as the boat was lowered down toward the water what next happened?

A. Well, they discovered there was no rudder in it, so they stopped lowering it.

Q. After it had been lowered partway down?

Plaintiff's Exhibit No. 2—(Continued)  
(Deposition of LaVern R. Hinrichs.)

A. Yes.

Q. When they discovered there was no rudder in it did the Mate tell them to stop or what?

A. Well,—

Q. Anyway, they stopped lowering it?

A. They stopped lowering it, anyway.

Q. All right. Then when it was thus stopped in that manner it was sort of even with one of the decks, wasn't it? [9]

A. Yes, it was.

Q. Didn't some other men get in then?

A. That is when the Chinaman, Chan, and another A.B. by the name of Pete Flovik—they got aboard at that level.

Q. So Flovik got in the boat with the Chinaman?

A. Yes.

Q. So there were now four of you in the boat?

A. There was.

Q. Was Flovik standing next to you?

A. He was beside me, yes.

Q. Now we have got four of you in the boat and the boat has been stopped while they were going to get a rudder. Then what happened?

A. They started to raise the boat.

Q. Then what happened?

A. Then Pete kind of give me a nudge and he says—I don't know exactly what he said, but he pointed and I glanced over and I could see the ring on the hook was just on the very edge, and I hol-lered, "Stop," to stop the boat, and just then it



Plaintiff's Exhibit No. 2—(Continued)

(Deposition of LaVern R. Hinrichs.)

happened so fast the next thing I knew I was in the water.

Q. You say "it happened." What happened?

A. The after end of the ring slipped off of the hook. And it all happened so fast—I mean after we noticed it it was just a matter of just as fast as you could say it happened, and the next thing I knew I was in the water. [10]

Q. In other words, the ring slipped off the hook, the after end of the boat fell and you all fell with it?

A. Yes.

Q. Do you think you could draw any kind of a rough diagram illustrating in a rough way how that swivel link was balanced on the top of the hook?

A. I can try. It will be rough, but I can try.

Mr. Denecke: I have some pictures here. Either one of these you might be able to use. I think we have both got the same pictures.

Mr. Wood: I think we have, too. Just let him make a little drawing, and then we will use the pictures, too.

(The witness drew a diagram as requested.)

Mr. Wood: I will ask you to continue drawing further up there. What is this round circular thing there?

A. That is a swivel with another ring.

Q. Then the fall continues up here, does it?

A. Yes, it shackles into the block.

Q. Just draw a little line showing it goes up. It goes up towards the davits, doesn't it?

Plaintiff's Exhibit No. 2—(Continued)  
(Deposition of LaVern R. Hinrichs.)

A. Yes.

Mr. Wood: I will have this marked for identification.

(The diagram drawn by the witness was marked by the Notary as Plaintiff's Deposition Exhibit 1 for identification.) [11]

Q. (By Mr. Wood): I think on this Plaintiff's Exhibit 1 for Identification the hook speaks for itself. This dotted line represents the link, does it?

A. The ring, yes.

Q. The ring that is supposed to connect with the hook?     A. Yes.

Q. And when properly seated it is right up near the bend of the hook?     A. Yes.

Q. But on this occasion it was just resting on the tip of the hook?     A. Right.

Q. What did you say this circular thing was up here?

A. That is another ring with a swivel in there.

Q. Another ring with a swivel?     A. Yes.

Mr. Wood: I think that is plain enough. I will offer it in evidence.

Would you mark that for identification.

(A photograph was marked by the Notary as Plaintiff's Deposition Exhibit 2 for Identification.)

Q. (By Mr. Wood): Mr. Hinrichs, I show you this Plaintiff's Exhibit 2 for Identification. That gooseneck hook there toward the top of the picture—I don't know whether you [12] call that a goose-

Plaintiff's Exhibit No. 2—(Continued)

(Deposition of LaVern R. Hinrichs.)

neck or not—that is the hook we are talking about, is it not?      A. Yes, it is.

Q. That is a picture of it?      A. Yes.

Q. And the end of this chain or series of links here at the right of the picture resting on that board, what is that end link that I am pointing at?

A. That is the ring that goes into the hook.

Q. That is the one that connects with the hook when it is properly seated?      A. Yes.

Q. You notice on this picture here two little keepers or guards, I call them. Do you see them?

A. Yes, the fingers there.

Q. Fingers. Is that what you call them?

A. I guess. I never actually knew the normal phraseology.

Q. What are they?

A. They are supposed to be a safety catch.

Mr. Wood: I will offer that in evidence.

Mark this photograph for identification.

(A photograph was marked by the Notary as Plaintiff's Deposition Exhibit 3 for Identification.)

Q. (By Mr. Wood): I show you Exhibit 3 for Identification [13] and ask you if that is another picture of the same hook in the lifeboat with the safety catches attached?      A. Yes.

Mr. Wood: I will offer that in evidence.

Would you mark this?

(The photograph was marked by the Notary

Plaintiff's Exhibit No. 2—(Continued)  
(Deposition of LaVern R. Hinrichs.)

as Plaintiff's Deposition Exhibit 4 for Identification.)

Q. (By Mr. Wood): Now, Mr. Hinrichs, I know that you didn't have anything to do with the releasing gear, and it will probably be testified to by other witnesses, but as long as you are here I will ask you to look at that picture. Is that a picture of the releasing gear on the bottom of the lifeboat?

A. Yes, that is.

Mr. Wood: I will offer that in evidence.

Mark this picture, please.

(The photograph was marked by the Notary as Plaintiff's Deposition Exhibit 5 for Identification.)

Q. (By Mr. Wood): I show you Exhibit 5 for Identification, merely for the purpose of showing the location of the hook at the end of the lifeboat. Does that show that?     A. Yes.

Q. At the right-hand side of the picture as you are looking [14] at it the hook there is at the point of the lifeboat—I don't know whether it is the bow or stern, but it is one end of the lifeboat, isn't it?

A. Yes, it is the stern end of the lifeboat.

Mr. Wood: I will offer that in evidence.

Q. You don't remember what Flovik said, the words he used as a warning?

A. No. My vision moved and I looked, and then I realized that there was a dangerous situation, so actually I didn't hear just what he said.

Plaintiff's Exhibit No. 2—(Continued)  
(Deposition of LaVern R. Hinrichs.)

Q. But you actually did see the link just poised on the tip of the hook?      A. Yes, I did.

Q. You have a colored transparent photograph of yourself in the lifeboat taken just a moment before this happened, haven't you? I don't know whether you have it with you.

A. No, I wouldn't say exactly it was the moment, but it was within a few minutes or maybe a minute—I mean I don't know just when the picture was taken.

Q. But it was while you were in the lifeboat?

A. Yes, it was just before the accident.

Q. It was during the boat drill after you got in there and it was being lowered?

A. Yes, it was.

Q. That was taken by one of your shipmates?

A. Yes, it was.

Q. It has been in your possession and in your house, hasn't it?

A. It has been in my home ever since.

Q. You asked your wife to mail it down to us here?      A. Yes, I did.

Q. By airmail. It was supposed to get here today?      A. Yes.

Q. As I understand, it shows you standing up in the lifeboat?      A. Yes.

Q. With your hand holding onto what?

A. A fall, a wire fall.

Q. When expanded it shows the link balanced

Plaintiff's Exhibit No. 2—(Continued)  
(Deposition of LaVern R. Hinrichs.)

on the tip of the hook as we have discussed, does it not?             A.   Yes.

Mr. Wood:   I think that is all.

Cross Examination

Q.   (By Mr. Denecke):   Mr. Hinrichs, this picture shows you with your hand on the fall. Was that the aft fall?             A.   Yes.

Q.   Let me see if I have this straight. You got in the boat on the boat deck? [16]

A.   I got in on the lifeboat deck, yes.

Q.   Then you and somebody else got in at that time, you and Nelson?             A.   Yes.

Q.   Then the boat was lowered about how far down?

A.   Well, it was one of the two decks. I don't know which one it actually stopped on, but it was even with the deck because two other fellows boarded there.

Q.   Then two other fellows got in; is that right?

A.   Yes.

Q.   Then was it at that position of the boat that somebody found out the rudder wasn't in there?

A.   No, that is the reason the boat was stopped, was to get the rudder.

Q.   Oh, I see. It was stopped at that deck to get the rudder, and then these two fellows got in?

A.   Yes.

Q.   Then was the boat moved at all from that position before it fell?



Plaintiff's Exhibit No. 2—(Continued)

(Deposition of LaVern R. Hinrichs.)

A. Yes, it was starting up.

Q. It was starting up. You were going to go back up to the lifeboat deck to get the rudder?

A. Yes.

Q. And it was on its way back up that she fell?

A. That is right. [17]

Q. Had you ever been in this particular lifeboat before?

A. No. My boat is on the other side, and it was dockside to, so you couldn't put that one in the water.

Q. Do you know, Mr. Hinrichs, looking at Plaintiff's Exhibit 2, whether or not it is possible to get this—what do you call that, a ring or swivel?

A. Ring.

Q. Link, I guess you call it?                      A. Yes.

Q. Do you know whether or not you can get that link off the hook with these fingers up?

A. You are not supposed to. That is why they put the fingers there.

Q. I understand that, but I wondered do you know whether on this particular lifeboat this one could go back and forth—by back and forth I mean on and off the hook—with the fingers up?

A. I don't know. I never tried it.

Q. How about on your regular lifeboat? Do you know on that?

A. Well, I never—every time I have taken it off these fingers they are down. I mean when you release the boat in the water. So I mean I can't actu-

Plaintiff's Exhibit No. 2—(Continued)  
(Deposition of LaVern R. Hinrichs.)

ally say truthfully whether—you are not supposed to be able to take it in and out, because that is why they are there, but I couldn't truthfully [18] say. I mean I never tried it, to be truthful.

Q. In Exhibit 4 here, which is a picture of the releasing gear, is that in the closed position?

A. Right here?

Q. Yes.

Mr. Wood: As shown in the picture.

A. Yes.

Q. (By Mr. Denecke): It is in the closed position there?     A. Yes.

Q. In the raised position or the open position, I should say, what happens?

A. You mean this here?

Q. Yes.

A. It pulls—I don't know whether it is a chain or cable in the bottom of the boat up into here, which releases——

Q. These fingers that you have described there?

A. Yes.

Q. How does this look when——

Mr. Wood: No, it doesn't release the fingers, does it? I thought it lifted——

A. It releases. There is a ball here that the hook ends in.

Mr. Wood: It raises the hook up like that, doesn't it?

Mr. Denecke: I don't think so.

A. It lets it fall back. I wouldn't say raises up.

Plaintiff's Exhibit No. 2—(Continued)

(Deposition of LaVern R. Hinrichs.)

I mean [19] the hook—yes, it comes up with a pull here into here (indicating), which would let the hook come back so you can slip it out easy. I mean it—how would you explain it?—it is so when you hook it up again you can just set it there and just push this back into position again.

Q. Then, actually, is there a lever and it raises up—— A. Yes, that is a lever.

Q. And when it is in the open position this is raised up to practically a vertical position or somewhere close to that?

A. Yes, practically.

Mr. Wood: When you say “this” is raised up——

Mr. Denecke: I am referring to what is in the picture, Exhibit 4, which has the words “releasing gear” there.

A. There is a safety pin here.

Q. You have to pull the pin before you can raise her up there? A. Right.

Q. Just so we will know where the releasing gear is, would you show on Exhibit 5 where this releasing gear is which is shown on Exhibit 4? Does it show on there?

A. It should be down in here, but I don't think you can see it.

Q. Am I correct, Mr. Hinrichs, that normally it is between the last full seat and the bow or stern of the lifeboat? [20]

A. I am pretty sure it is located right in this

Plaintiff's Exhibit No. 2—(Continued)  
(Deposition of LaVern R. Hinrichs.)

area, because different lifeboats have a different setup on them. But I am positive that it is in this area.

Q. Generally the one for the aft gear is close to the aft end?

A. Well, one of them releases on both ends.

Q. One of them releases both ends?

A. Yes, usually your after end, or wherever the coxswain or whatever you care to call him is, the man in charge of your lifeboat. That is where he is at.

Q. On this picture that Mr. Wood was mentioning do you remember where the lifeboat was when the picture was taken? In other words, was it still on the lifeboat deck or was it down on one of the other decks, where Chan got on?

A. No, I didn't even know it was taken until after, when he gave it to me. I didn't know the picture was taken.

Q. And the picture itself doesn't give you any assistance——

A. No, it just shows the boat.

Q. It is looking out from the ship?

A. Yes, he was on the ship when he took it.

Q. You mentioned something—I think you called them gripes—when the lifeboat was in the cradle?

A. Yes.

Q. Can you tell me very briefly what you do when you gripe the boat? [21]

Plaintiff's Exhibit No. 2—(Continued)

(Deposition of LaVern R. Hinrichs.)

A. Well, this type of gripe? I mean there are different——

Q. The one that was used on this boat.

A. The one that was used on this?

Q. Yes.

A. It is a wire that goes around the boat at both ends and has a turnbuckle with a hook, a pelican hook, so you can tighten or loosen it, and it is just to keep your boat from swinging, actually.

Q. Where is the hook attached, the pelican hook?

A. It is on the inboard side. It is on the davit itself. I mean there is—what do you call it—there is a platform.

Q. Will this picture show what you are referring to?      A. Yes.

Mr. Denecke: I will have that marked for identification.

(The photograph referred to was marked by the Notary as Defendant's Deposition Exhibit 6 for Identification.)

Q. (By Mr. Denecke): This is Defendant's Exhibit 6, Mr. Hinrichs. Would you tell me where the pelican hook which is at the end of the gripes on this particular one hooked on?

A. You can't see the actual hook. It is in between this area and a cable that goes around the aft. Here is the turnbuckle [22] here.

Q. In other words, this is the turnbuckle that tightened that and the hook hooked onto this davit?

Plaintiff's Exhibit No. 2—(Continued)  
(Deposition of LaVern R. Hinrichs.)

A. No, it goes over a wheel-like and down. It is not part of the davit. I mean it is a wire to keep—when the ship rolls to keep the lifeboat from rolling in and out of the davit, this type of davit.

Q. When the ship is in the cradle there, is the keel resting on the cradle? Am I stating that fairly accurately?

A. You mean that the whole lifeboat is resting on the cradle?

Q. Yes.

A. Well, I wouldn't exactly say resting. It is against the cradle, yes. But this—we will call it the gripe—it holds the boat in so that it won't roll in rough weather. I mean it secures it into this part here, where you have a bumper there, and keeps the boat from rolling in rough weather.

Q. What I am calling the keel here of the lifeboat, is it resting on anything when it is in the cradle there?

A. Well, it is sitting on—what would you call it?—a notch-like here, yes.

Q. A notch which is part of the davit proper?

A. Yes.

Q. But I understand that it is still supported and suspended [23] by the falls?

A. This here has the majority of the weight, or otherwise it would bang around. I mean you tighten them. You have a winch at the other end, and when you get them secure she is tight.

Mr. Wood: When you say "this here has the



Plaintiff's Exhibit No. 2—(Continued)

(Deposition of LaVern R. Hinrichs.)

majority of the weight," it is not clear what you mean. What do you mean by "this here has the majority of the weight"?

A. This cable would be the actual fall.

Mr. Wood: If you will pardon the interruption. You mean the weight of the boat is still mainly on the hook?

A. Yes.

Mr. Wood: And the fall?

A. Yes.

Q. (By Mr. Denecke): From your statement there, when you get the thing in the cradle then they tighten up on this?

A. Well, it is tight.

Q. It is tight?

A. Because that is what brings it up—these run on a roller, and as it engages that pulls this up the arm of the davit, and therefore it is tight all the time. It has to be or else—I mean it wouldn't pull the davit up into position. Therefore you keep a strain on it at all times.

Q. Mr. Hinrichs, as I understood your testimony at the very beginning of your deposition, you were looking rather [24] casually and you saw them unloading sand?

A. I believe sandbags, yes.

Q. Or some sort of bags? A. Yes.

Q. They were unloading sandbags near the No. 4 hatch? A. At No. 4 hatch.

Q. At No. 4 hatch. Then when did you next see

Plaintiff's Exhibit No. 2—(Continued)  
(Deposition of LaVern R. Hinrichs.)

the boat, the lifeboat?            A. Up by the davits.

Q. Up by the davits?

A. The falls. The davits are way up on deck, but in that general area there.

Q. Do you know where the repair men, or at least the men that put the sandbags in and took them out again, were? Were they still in the boat?

A. There was two men still in the boat.

Q. And the boat was on the water then?

A. Yes, it was on the water.

Q. Then when is the next time you saw the boat? Did you see it actually raised?

A. No, I didn't.

Q. These pictures, Exhibits 2 through 6, they are all pictures of the actual lifeboat that we are concerned with, aren't they?

A. As far as I know. [25]

Q. At least, it appears that they are?

A. It looks like the same boat, with the oil spills and stuff.

Q. Have you worked ships before having a similar type lifeboat? I don't mean an identical one but a similar type?            A. Yes.

Q. Including a similar type of releasing gear? And again I am talking about the type.

A. Yes.

Mr. Denecke: I have no further questions.

#### Redirect Examination

Q. (By Mr. Wood): There are just two points

Plaintiff's Exhibit No. 2—(Continued)

(Deposition of LaVern R. Hinrichs.)

about your testimony that are not quite clear, I think. You said that the boat, after having stopped to get the rudder, was being lifted when it dropped. You told Mr. Denecke that.           A. Yes.

Q. Unless that is further explained, it sounds as if it were being lifted up some distance.

A. No, it was in the process of being raised, or being lifted, I mean.

Q. I think you said earlier it had just started to be lifted.

A. Yes, it was just started. Actually it was on the way [26] up, but had just started.

Q. That is what I mean. It had just begun to be lifted?           A. Yes.

Q. Now another thing that I think we all understand, but perhaps we don't. The releasing gear has no effect on these fingers or these safety guards at all, does it?

A. No, because when it falls back it releases the guard.

Q. Those fingers remain in position all the time?

A. Yes.

Q. And when the releasing gear is operated to release the boat from the davits, what it does is throw this hook——           A. Back.

Q. ——backwards, so that the hook, being on a hinge or something, comes back enough so that the link then automatically can slip right out of the hook?           A. Yes.

Q. Is that right?           A. That is right.

Plaintiff's Exhibit No. 2—(Continued)  
(Deposition of LaVern R. Hinrichs.)

Mr. Wood: You understand, don't you, Mr. Denecke?

Mr. Denecke: Yes; I was confused there for a moment.

Mr. Wood: I think that is all.

Recross Examination

Q. (By Mr. Denecke): Now, Mr. Hinrichs, when you saw the hook here at this [27] instant that Flovik called your attention to it was the hook in position? By that I mean was it as it should be with the releasing gear closed?

A. Was it actually, you mean——

Mr. Wood: You mean was it like that, down?

Mr. Denecke: Yes.

A. Yes, it was down.

Q. The hook was in the position as shown on Exhibit 2?            A. Yes.

Q. How about the fingers? What was their position?

A. To tell you the truth, I didn't even notice the fingers. But I did see that the ring, instead of being seated in where it should, was just balancing on the point of that.

Mr. Wood: On the point of the hook?

A. On the point of the hook, yes.

Mr. Denecke: That is all.

Redirect Examination

Q. (By Mr. Wood): But the hook was in its normal down position?            A. Oh, it had to be.

Plaintiff's Exhibit No. 2—(Continued)

(Deposition of LaVern R. Hinrichs.)

Q. As it should be when the releasing gear is locked?      A. Yes.

Mr. Wood: That is all.

Mr. Hinrichs, under the Federal Rules you have [28] the right to read and sign your deposition or you may waive that right, if you wish. Are you willing to waive the reading and signing of your deposition?

A. Yes.

(Deposition concluded.) [29]

[Endorsed]: Filed May 20, 1957.

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#### PLAINTIFF'S EXHIBIT No. 4

[Title of District Court and Cause No. 8459.]

Portland, Oregon, April 12, 1957.

9:30 o'clock A.M.

#### DEPOSITION OF DAVID E. R. PATTERSON

Be It Remembered That, on this 12th day of April 1957, beginning at the hour of 9:30 o'clock A.M., the deposition of David E. R. Patterson, a witness in behalf of the plaintiff herein was taken pursuant to the oral stipulation hereinafter set out, before Wm. Chun, a Notary Public for the State of Oregon, in the Offices of Wood, Matthiessen, Wood and Tatum, 1310 Yeon Building, Portland, Oregon.

Appearances: Mr. Erskine B. Wood, appearing

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

for plaintiff. Mr. Kenneth E. Roberts, appearing for defendant. [1]\*

David E. R. Patterson, a witness in behalf of the plaintiff herein, being first duly sworn by the Notary to testify the truth, whole truth and nothing but the truth, was examined and testified as follows:

The Notary: Would you please state your name and address for the record?

The Witness: David E. R. Patterson; the address is 4872 29th Avenue South, Seattle, Washington.

Mr. Wood: This is in the District Court of the United States for the District of Oregon. The title of the case: American Mail Line, Ltd., a Corporation, plaintiff, versus Albina Engine and Machine Works, Inc., a Corporation, defendant; number 8459.

This is the deposition of David E. R. Patterson, taken in the instance of the plaintiff, the testimony de bene esse, to be used at the trial if the witness is not available.

And it is stipulated, is it not, Mr. Roberts, that the deposition may be taken at this time, namely 9:30 A.M., April 12th, at the Offices of Wood, Matthiessen, Wood and Tatum, and before Mr. Chun as Reporter and Notary Public?

Mr. Roberts: So stipulated. We waive any notice.

Mr. Wood: And do you wish that we also stipu-

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\* Page numbers appearing at top of page of Original Deposition.



Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

late that all objections are reserved until the time of trial except objections to the form of the question or responsiveness of the answer are waived unless made at this time? [2]

Mr. Roberts: That is the usual stipulation and I will so stipulate.

Mr. Wood: And the record will show that the witness has already been sworn.

Direct Examination

Q. (By Mr. Wood): State your full name, Mr. Patterson?      A. David E. R. Patterson.

Q. And where is your home?

A. In Seattle, Washington.

Q. And how old are you?

A. Thirty-two years old.

Q. What is your occupation?

A. I am Chief Mate on the Lahaina Victory.

Q. You go to sea?      A. Yes, I do.

Q. How long have you gone to sea?

A. Sixteen years.

Q. Now, do you hold a license issued by the United States Government, through the Coast Guard as an officer?

A. Yes, I have an unlimited Chief Mate's license.

Q. Unlimited Chief Mate's license?

A. Chief Mate's license, yes.

Q. How long have you held that license?

A. About, over four years—a little over four years, [3] approximately.

Plaintiff's Exhibit No. 4—(Continued)  
(Deposition of David E. R. Patterson.)

Q. And unlimited means it is for any ocean?

A. Any ocean, any tonnage.

Q. Any tonnage?            A. Yes.

Q. Prior to holding a chief mate's license, did you hold a license as second mate, third mate?

A. I had a second mate's license for a few years, and then I had a third mate's license for—I have had a license now—I have been a licensed officer over twelve years or going on thirteen years now.

Q. And those licenses were all issued by the United States Government?

A. All by the United States Government, yes.

Q. Now, do you hold any commission in the Navy?

A. Yes, I am a Lieutenant (jg) in the U. S. Naval Reserve.

Q. When were you given that commission?

A. I applied for a commission in 1950. I was commissioned in 1950.

Q. Then have you served a period of active service—duty under the commission?

A. No, not active duty.

Q. Have you made your training cruises?

A. No, I have just been taking correspondence courses, and as to that extent, I have never been actually on a training ship [4] or—(interrupted)

Q. Your entire service has been in the merchant marine?

A. Entire service has been on merchant ships.

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

Q. And you hold a reserve commission in the Navy as Lieutenant (jg)? A. Yes.

Q. Now, for what steamship companies have you worked as a mate—as a licensed officer?

A. American Mail Line, Alaska Steamship Company, oh, let's see—Mississippi Steamship Company, Alaska Transportation—that is about all I can think of—Pacific Tank—no, just a minute, not Pacific Tankers. It is hard to tell, I was on a ship that they were agents for. I believe it was—no, I couldn't even remember. It was during the first part of the war so I don't remember.

Q. All right, now, what is your present ship?

A. The Lahaina Victory.

Q. And that is operated by American Mail Line?

A. American—operated by American Mail, yes.

Q. And what is your position on that ship?

A. Chief Officer.

Q. And are you about to depart from here on a voyage?

A. We are leaving Saturday morning at 6:30.

Q. That will be Saturday, April 13th?

A. 13th. [5]

Q. That's tomorrow?

A. That's tomorrow morning.

Q. And where is the vessel bound, so far as you know?

A. As far as I know, it is going to Korea.

Q. And your home is in Seattle, is that right?

A. My home is in Seattle, yes.

Plaintiff's Exhibit No. 4—(Continued)  
(Deposition of David E. R. Patterson.)

Q. So is it uncertain when—or if—(interrupted)

A. This is not a scheduled ship. There is no—you are signed on for a period of at least nine months, so they could send us anywhere. They could make a fast trip over and back. There is no schedule to this ship. It is just wherever they can grab a cargo.

Q. Yes, were you aboard the SS Java Mail at the time one of the lifeboats fell and a seaman named Nelson (phonetic) sustained injuries on the 7th of April 1955?     A. Yes, I was.

Q. And what was your position aboard the vessel?     A. I was Third Mate.

Q. Were you present when the lifeboat fell?

A. Yes, I was.

Q. Did you see the accident?

A. I saw the accident, yes.

Q. Now, going back—strike that—about what time did the accident happen?

A. Just after coffee time, around 10:30—after—oh, I would [6] say 10:30.

Q. Now, going back a little before the accident, had any work or tests been conducted on the lifeboat?

A. Yes, there was a weight test made by the Albina Repair.

Q. That was Albina Engine and Machine Works?

A. Albina Engine and Machine Works, that's right.

Q. And did you see that weight test?

Plaintiff's Exhibit No. 4—(Continued)  
(Deposition of David E. R. Patterson.)

A. Yes, I witnessed the weight test along with the Coast Guard Inspector.

Q. Where were you when you witnessed it?

A. On the boat deck.

Q. You were on the boat deck?

A. That's right.

Q. And where was the boat?

A. The boat was at—it was in the water and it hoisted up clear of the water.

Q. With the weight in it?

A. With the weight in it, that's right.

Q. Now, did—where was the boat taken to have the weight put into the boat?

A. The boat was drifted aft to number 4 hatch.

Q. And who were in the lifeboat when that was done?

A. The Albina Repair and Machine—(interrupted)

Q. Do you know how many men were in the boat? A. I only remember two. [7]

Q. And then where did they load the weight in?

A. The weight was loaded by the ship's gear, number hatch.

Q. Then where was the boat taken?

A. The boat was taken then, under the falls, hooked up.

Q. And who hooked it up?

A. The Albina people there.

Q. Did the men in the boat hook it up?

A. Yes.

Q. The boat was in the water?

Plaintiff's Exhibit No. 4—(Continued)  
(Deposition of David E. R. Patterson.)

A. The boat was in the water, that's right.

Q. Then was the boat lifted with the weight in it?

A. The boat was lifted with the weight in it.

Q. Did the Albina men remain in the boat while it was lifted?     A. Yes.

Q. And then after it was lifted, what was done?

A. The boat was then released, drifted aft to number 4 hatch again.

Q. I suppose first it would have to be lowered into the water?

A. Yes. After it was released, it was dropped down, unhooked and taken back to number 4 hatch.

Q. Now, what do you mean by "released"?

A. Well, for the weight test, the boat had to be hooked up. They had to release the hook, drift the boat aft.

Q. Now, who released the hooks?

A. The Albina Repair Yardmen. [8]

Q. And what hooks are you talking about, when you say they released the hooks?

A. The hooks, or the two—for the two on the falls that were on the lifeboat.

Q. How many are there?

A. One on each end.

Q. On each end of the lifeboat?

A. That's right.

Q. All right, then, after they released the boat by unhooking the boat from the falls, then what did they do with the boat?



Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

A. Took it back to number 4 hatch, discharged the weight and then brought the boat back to the davits again, under the falls again.

Q. And who was that done by?

A. Done by Albina.

Q. And then was the boat hooked on to the falls again? A. Yes, sir.

Q. And who did that? A. Albina.

Q. Then, did you continue to stay and watch the proceedings while the boat was raised, or—(interrupted.)

A. No, all I had to do was to witness the test. Actually, I don't have to witness the test. The Coast Guard Inspector witnesses the test. I was with him.

Q. And you were on the boat deck—(interrupted.) [9]

A. Yes—all I could see—I could see—all he wanted to— (interrupted.)

Q. You could see all of the proceedings?

A. All he wanted to do was to see that the davits would hold when the weight test was made.

Q. Well, then, after the weight test was completed, and the boat brought back empty—the boat was brought back empty, wasn't it?

A. That's right.

Q. Then where did you go?

A. I went with the Inspector on some other job. I don't remember what it was, but just around, anyway. As I remember, it was fairly close to 10

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

o'clock at that time, and we had a cup of coffee.

Q. Then they had coffeetime aboard the ship?

A. Coffeetime, yes.

Q. When did you next come back to that lifeboat?

A. After fire and boat drill—I mean after coffeetime.

Q. I have been a little bit loose talking about the lifeboat. What lifeboat is it that we have been talking about throughout here?

A. It is the starboard lifeboat.

Q. The one on the starboard side?

A. That's right.

Q. How many lifeboats are there on the ship?

A. Two lifeboats.

Q. And this is the starboard lifeboat?

A. That's right.

Q. Is that the one that you have been talking about all through your testimony?

A. That is the one.

Q. Then what happened after coffeetime?

A. Well, we had all hands muster for a boat drill.

Q. And where did you muster?

A. Along with everybody else, on the boat deck.

Q. And by which boat?

A. By the starboard boat. At that time, it was the offshore boat.

Q. And did you take part in the fire and boat drill in any way?             A. Yes.

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

Q. What was your job?

A. I was in charge of the boat drill.

Q. For that boat?           A. For that boat.

Q. Well, then, what was the first thing that you did or had the crew do?

A. Well, first, we rang the alarm, and all hands come up on the boat deck, and then I assigned a couple of men to run out the painter and one man to go in the boat and check the plug.

Q. And then what is a plug? [11]

A. It is a—a plug is a plug for the bottom of the boat. All it is, we use it for draining purposes on board when it is not in the water.

Q. You mean—do I understand it is a plug on the bottom of the boat?           A. That's right.

Q. That is taken out to drain any water that is in the boat?

A. Any rain water—any water that happens to get in there on a voyage. The plug is always out of the boat, naturally. The first thing you do is to put the plug back in. I make sure—check to see that the plug is put back in.

Q. So you assigned a man, and told him to check the plug?           A. That's right.

Q. Then at the time this fire and boat drill commenced, after coffeetime, was the boat in the gripes?           A. Yes.

Q. And what are the gripes?

A. Gripes are two straps that hold the boat in, to keep the boat from swinging.

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

Q. Where are they?

A. One on each end of the boat.

Q. And do they go around the boat?

A. They go around the boat, that's right.

Q. And what are they secured to?

A. They are secured to the davit, by a pelican hook. [12]

Q. Now, when the boat is in the davits and in the gripes, what supports the weight of the boat?

A. The falls. They support the weight of the boat.

Q. And what is the purpose of the gripes?

A. The gripes is to keep the boat from—well, if you are in any heavy seas or anything, just to keep the boat frapped in to the davit?

Q. Frapped in?

A. Well, yes, keep it into the davit—keep it from swinging into the davit.

Q. Well, is the—is the weight of the boat—you have already answered that. But do the falls still support the weight of the boat?

A. That's right, the falls are always supporting the weight of the boat.

Q. About how much does a lifeboat weigh, approximately?     A. Approximately two ton.

Q. Well, then, at the outset of the fire and boat drill, was anything done about the gripes? Were they released?

A. Yes, the gripes were released.

Q. Who did that?

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

A. I don't remember. A couple of sailors.

Q. You don't remember their names?

A. No, I don't.

Q. A couple of sailors did that? [13]

A. Yes.

Q. Now, then, was the boat lowered?

A. The boat was then lowered.

Q. Were any seamen in the boat as it was lowered?

A. This is the part I am kind of vague on. I sent the men up to put the plug on—to check the plug and with the rest of everything going on, and I had the boat lowered down, and I assume that they were in the boat, although they could have gotten in at the boat deck as soon as it come down even with the boat deck.

Q. In other words, you don't know whether they got into the boat?

A. No, I couldn't—I couldn't remember exactly, whether the boat—whether they rode the boat down from the davits or whether they got in at the——(interrupted.)

Q. At which level?

A. At the level of the boat deck.

Q. Well, that's what I mean—were they—were there any men in the boat as it was lowered below the level of the—to the level of the boat deck?

A. Yes, there was.

Q. And how many? A. Two.

Q. Who was lowering the boat?

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

A. I believe it was a deck maintenance man.

Q. And how does he do that?

A. Just—excuse me—he just releases a brake.

Q. Where is that, on the boat deck?

A. Yes, on the boat deck.

Q. Near the davits?

A. Yes, it is near the davits. There is a winch right there.

Q. Then as the boat was being lowered, it is hanging in the air, is it supported at each end by the falls?     A. That's right.

Q. Then go on and tell what happened after that.

A. Well, the boat was—I had the boat lowered and then as the boat was going down, I walked over to the rail or close to where—when it got down to where I could see the boat, I looked to see that there was no rudder in the boat.

Q. What deck were you on?

A. The boat deck at this time. So I had the boat stopped.

Q. Where was the boat when you had it stopped—at what level, that was?

A. Level with the cabin deck, which is the next deck below the boat deck.

Q. You had the boat stopped and then what did you do?

A. I got one of the seamen, and got the rudder, and went down with him to the cabin deck, because I was going to go down in the boat.



Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

Q. Did some other seaman come along too? [15]

A. Well, that's what happened. When the boat was stopped, there was one fellow from the Steward's department and also one sailor that got in the boat, assuming that is what they were supposed to do. The procedure is, we had a ladder down to the water, and all hands were to go down the ladder.

Q. That is a Jacob's ladder?

A. A Jacob's ladder. This messboy, assuming that that is when the boat stopped, got into the boat, and also one other seaman.

Q. That is when the boat was stopped at the——  
(interrupted.)

A. At the level of the cabin deck.

Q. At the level of the cabin deck?

A. That's right.

Q. That is one deck below—one deck below the boat deck, a couple of these fellows—— (interrupted.)  
A. Got in.

Q. ——assumed that they should get in?

A. Assuming—what they were trying to do is to get off from climbing the ladder, that is what—— (interrupted.)

Q. All right, then, how many were in the boat?

A. There were four men in the boat.

Q. And what did you do yourself?

A. Well, I had reached the cabin deck with one sailor, and the rudder, and I was just getting ready to step in the boat—in other words, I was

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

going to get in the boat and have the man [16] pass me the rudder—have the rudder hooked up or ship the rudder so that she would be ready when she was lowered into the water. Just to save time, was all we were trying to do.

Q. And what happened?

A. Just as I was getting ready to step in the boat, the boat fell.

Q. Immediately prior to the boat falling, did you hear one of the seamen say anything?

A. Somebody did say something?

Q. Or remark anything?

A. But it was so—it happened so fast that by the time that I—I had just turned around to step in, in fact, I was backing up—I had ahold of this tiller and I just turned around to step in the boat, and down it went.

Q. That is, you were stepping from the cabin deck level?

A. From the cabin deck level into the boat.

Q. And was the boat about level with the cabin deck? A. Yes. Well, approximately level.

Q. And it was suspended by the falls?

A. Suspended by the falls.

Q. At which end did you start to step in?

A. The after end, where I was to ship the rudder.

Q. And at which end did the boat let go first?

A. From the—from where I was, the way it fell, from the after end—I mean, you see, everything

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

happened so fast, that [17] it—I assume it would be the after end when she let go.

Q. You mean the boat let go at the after end?

A. Yes.

Q. Before it fell from the forward end?

A. Yes.

Q. What happened when the boat let go from the after end?

A. Well, the boat went down, indicating that the weight was then all taken by the other davit—the other davit and falls and—— (interrupted.)

Q. That would be the forward one?

A. And it broke the falls—it took the davit—swept the davit off the boat deck.

Q. And how many men were in the boat when it fell?

A. There were four men in the boat.

Q. Do you remember who they were?

A. There was Gordon Nelson; there was this messboy by the name of Chan, and there was Flovik (phonetic), and Hinricks.

Q. I am not sure now whether—I don't remember exactly what you testified, as to whether somebody had said something immediately——(interrupted.)

A. Somebody did say something, but it was before—I mean, it just happened—it happened so fast that whatever—I didn't see anything. He said something about—I couldn't remember anyway, I know.

Plaintiff's Exhibit No. 4—(Continued)  
(Deposition of David E. R. Patterson.)

Q. Do you remember at all what he said? I mean, did he say [18] something about the weather, or what a nice time he had the night before?

A. No, no, he did say something about the hook or the boat or to grab ahold of a line or something. It was unusual for whatever he said—and it was either to grab a man rope or something he said to another seaman. He wasn't talking to me, but I was right there, naturally, I could hear. I don't remember exactly.

Q. That was just a split second?

A. Just—it happened so fast—just maybe a second. As I said, before—— (interrupted.)

Q. Before what?             A. Before the boat fell.

Q. Now, before you started this lowering of the boat and when the fire and boat drill first began, and you were on the boat deck, did you make any inspection of the link in the hook by which the boat is supported to the falls?

A. No, I did not. I did not inspect it.

Q. Is it customary for the Mate in charge of the lifeboat to inspect the attachment of the link to the hook?

A. It is not customary to inspect.

Q. What do you rely upon?

A. This is a patented device. There could not be anything wrong with these hooks or with anything, if you got the weight on the falls, there is nothing that can happen. [19]

Q. Now, you have talked about this hook and

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

the gripes, can you explain it in a little more detail? Now, where is the hook attached?

A. The link, you mean, on the fall—the link is on the fall.

Q. The link, and what is the link?

A. Just a swivel hook or a swivel link that is made fast to the — (interrupted)

Q. There is a difference between a hook and a link or link? A. Yes.

Q. A ring or link goes all the way around, doesn't it? A. Yes.

Q. A hook has— (interrupted)

A. This is not a hook; this is a ring.

Q. All right, it is a ring?

A. There is no opening in it. It is a complete circle.

Q. And what is that attached to?

A. To the block on the fall.

Q. Is that the last connecting member on the fall itself? A. Yes, it is.

Q. Is that oval or circular?

A. It could be anything. It could be elongated. It could be oval. It could be circular, depending on the different manufacturers.

Q. All right, now, what does this link or ring or swivel attach on to on the lifeboat? [20]

A. It attaches to a hook.

Q. On the— (interrupted)

A. On the boat.

Q. And how does that hook operate?

Plaintiff's Exhibit No. 4—(Continued)  
(Deposition of David E. R. Patterson.)

A. The hook is—it is just a regular hook that flops up and down and is locked by a locking device.

Q. And what is the releasing gear?

A. The releasing—I mean, that is a releasing gear—I mean, that is—it is a lever thrown to release this hook from that ring.

Q. And is that releasing gear—where is that located? That is a lever?

A. Usually in the middle of the boat.

Q. Toward the bottom?

A. Bottom, yes, sir; on the bottom, off to one side, but anyway—— (interrupted)

Q. Now, when the releasing gear or locking device is in the closed position, then what is the position of the hook?

A. Would you repeat that, please?

Q. When the releasing gear or the locking device is in the closed position—— (interrupted)

A. Yes.

Q. ——then what is the position of the hook?

A. The hook is, the ring is hooked in on the hook, from the falls is—is on this hook—hooked into this hook. [21]

Q. Well, when it is in the locked or closed position, can the hook hinge and flop back?

A. No; no. When it is locked, there is no way for that flopping at all.

Q. Now, when the releasing gear is released so that it opens, then how does that affect the hook?



Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

A. Well, when you release—when the releasing gear is thrown, the hook can flop or has to flop up and the hook falls off—the hook falls out—or the ring falls out, let me put it that way.

Q. Now, when the releasing gear is locked, and the hook is in the closed position, what is there to keep the ring from coming out of the hook?

A. There is a couple of fingers made fast to the hook on the boat.

Q. Now, do those fingers move when the releasing gear is operated?           A. No.

Q. They are stationary?

A. They are stationary.

Q. Well, when the hook is—what is the purpose of those fingers?

A. The purpose of the fingers is when you are hooking your boat up, assuming now, that you are down on the boat by yourself, or you would hook up one end of the boat, the fall—put the fall [22] in on the hook, throw the releasing bar over and lock the hook on the ring. The keepers will then keep the hook, while you are doing this—will keep the hook from coming out.

Q. Do the keepers come sufficiently close to the end of the hook so that the space, so that, when it is closed—— (interrupted)

A. Yes, that's the idea.

Q. ——the keeper will keep the ring from slipping off the hook?           A. Yes, that's right.

Q. Well, if the hook and the keepers are in good

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

condition, the way they are designed to be, is it possible—and when the hook is closed and locked, is it possible for that ring to slip out?

A. No, that is the idea of the keepers. If they are in—if the keepers are in good order, the ring cannot come out.

Q. Now, after the accident happened—— (interrupted)     A. Yes.

Q. ——did you check the lifeboat or inspect it to find out whether the releasing gear had released, or whether it was still locked?

A. I inspected the boat and the releasing gear was locked.

Q. Where did you inspect it?

A. I inspected the boat in the water.

Q. Right after the accident? [23]

A. Yes. Well, whenever — after everything was—— (interrupted)

Q. After the injured man—— (interrupted)

A. After the injured men were taken care of. I went and got an ambulance, and like that.

Q. Then, at a later time, did you inspect the hook and the swivel and the keeper?

A. Yes, I did.

Q. And what did you find?

A. I noticed that the keepers were not long enough. There was enough space for that hook to come out.

Q. All right, when did you discover this?

A. When I inspected the boat.

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

Q. How long after the accident?

A. Oh, say an hour.

Q. Do you know whether the keepers were repaired or whether that condition was remedied later?

A. The condition was remedied, yes, sir.

Q. And what was done to remedy it?

A. Longer keepers were put on.

Q. They put on longer keepers?

A. That's right.

Q. Well, with your having found the releasing gear or locking device was closed and locked, how do you account for the accident? [24]

A. I—— (interrupted)

Mr. Roberts: That is, if he knows.

A. I account for the accident when—in this way, where the boat was hooked up, the men in the boat, when they hooked the boat up, had the hook—had the ring riding on the lip of the hook.

Q. And then what happened?

A. Well—— (interrupted)

Q. What happened to let the boat fall?

A. The hook slipped off, maybe from the men in the boat—the boat would naturally be swinging a little bit or moving, and she slipped off that hook.

Mr. Roberts: Just for the record, I am objecting to any opinion expressed by this witness on the ground and for the reason that it is completely speculative, and he has absolutely no facts on which to base the opinion.

Plaintiff's Exhibit No. 4—(Continued)  
(Deposition of David E. R. Patterson.)

Q. Could that have happened if the keepers had been long enough?     A. I don't believe so.

Q. To close that space?

A. I don't believe so.

Mr. Wood: You may cross examine.

### Cross Examination

Q. (By Mr. Roberts): Mr. Patterson, have you given any testimony today which [25] would in any way be different from the testimony you gave immediately after the accident on the Java Mail, when you were questioned by Mr. Guysick (phonetic), representing Albina Engine and by Mr. Frederickson, representing American Mail Line, do you think your testimony is substantially the same?

A. I would say so.

Q. Now, before we go any further, whose regular lifeboat was it, was it yours?

A. No, sir, it was the Second Mate's.

Q. You didn't know too much about its condition, did you?

A. Well, I don't—let's put it this way, I had been also Second Mate on that ship.

Q. Yes, but you—— (interrupted)

A. In other words, I have had both. It just happened at that time that I was Third Mate.

Q. So you would be on the port lifeboat?

A. I was on the port lifeboat at that time. That was my station.

Q. When had you been Second—when had you

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

been Second Mate on that ship before this accident?

A. I would have to check, but I had been there a year or so, I had been Second Mate. A year or so.

Q. Now, let's go back a little. When you—you had actually seen the Albina men in the boat, or at least you think you—you think they were Albina men, do you actually know they were? [26]

A. They were not crew members.

Q. They were not crew members?

A. Let's put it that way. That is all I can say.

Q. They could have been some sub-contractor or somebody—you don't actually know what men they were?

A. Well, of course, it is not up to me. I don't know anything about contracts or sub-contracts, but I know Albina always is the—when I see Bailey around, I know that he is—they usually have the contract.

Q. Well, Mr. Patterson, you actually saw the entire operation of the weight testing, is that correct?

A. I saw the boat—yes, I saw the weight testing, that's right.

Q. Did you see the boat when it was first put into the water? And unhooked and then drifted back to number 4?

A. Did I—— (interrupted)

Q. Did you see that?

A. Let's put it this way: I was around when it happened. I saw it, but I mean, I didn't spe-

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

cifically sit there and stand and watch them, you know what I mean. I could see what was going on, but I mean, I didn't care—I have been around boats—— (interrupted)

Q. Well, what I was trying—— (interrupted)

A. I have been around, you know.

Q. You actually then, saw the actual boat lifted in the falls and by the davits? [27]

A. That's right.

Q. After the sand or whatever weight had been put into it, is that correct?

A. That is correct.

Q. And then you actually saw it lowered again to the water and unhooked and then go back to number 4 and the weight taken out, is that it?

A. Yes.

Q. And did you actually see it come forward again, be hooked up again?

A. Yes, I saw the boat—well, I mean, just like I say, I saw the boat coming back, or you know, when they were going about their job there, I was around, so I mean, I—— (interrupted)

Q. During this procedure then, it is your testimony that the men in the boat, in doing the unhooking were not sailors, is that correct?

A. They were not ship's personnel, let's put it that way.

Q. All right, did you see the boat being brought up again after the test?

A. No. I mean, not entirely. As the boat was



Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

coming up, the Chief Mate ordered me to get some sailors. He was around too, as a matter of fact.

Q. What was that for?

A. Well, when the boat got up, we were going to have the gripes made fast. [28]

Q. Secured for sea?

A. Assuming—yes, that's right, assuming—the gripes, securing the gripes, getting ready for sea.

Q. And the Chief Mate was already there, is that correct?

A. He told me to get some sailors and as the boat was coming up, I left.

Q. Was this boat secured in the gripes inboard?

A. Yes, it doesn't— (interrupted)

Q. It doesn't hang from the davits outboard?

A. No; no.

Q. When you get it up to the boat deck, you have to swing the davits in, and then it rests inboard, is that it?

A. Well, you see, the davits—all it is is two arms, the arms are there, and all the davit does is, it goes up on these rollers and it goes inside of the boat deck.

Q. I see. And did you actually see that it was secured?

A. No, I did not actually see that.

Q. Who did that?

A. Did I actually see somebody secure that boat?

Q. Yes.           A. No, I did not.

Plaintiff's Exhibit No. 4—(Continued)  
(Deposition of David E. R. Patterson.)

Q. You did not?            A. I did not see it.

Q. Was that done by the Chief Officer and the four sailors? [29]

A. Well, you don't—I don't say the Chief Officer—just whoever was told to go ahead and do it had done it, that's all.

Q. Did you actually get these four sailors and assign them to—— (interrupted)

A. The first two or three I ran across, I sent them up immediately on the job up there.

Q. You, yourself didn't go up there?

A. No.

Q. What did you do?

A. I was with the Inspector. I just went with him, you know.

Q. You had some coffee about that time?

A. Yes, that's right.

Q. You had—you never had anything to do with the actual securing of the boat afterwards?

A. No, no, the boat, as far as securing the boat, the boat is secured in the falls, and that is good enough for me, you know.

Q. And you assumed that the work of putting the gripes on and so forth had been done by the sailors?            A. That's always—yes.

Q. What was the next thing that happened regarding that particular boat?

A. What was the next thing?

Q. Yes.

A. Well, we had a boat drill.

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

Q. Did you have a fire drill first? [30]

A. Yes—well, yes, a fire drill. It was—you see, the way it was on this, was more or less of—we call it a kind of token deal, because of the stevedores working around. Nobody turned the hoses on, and we went through—— (interrupted)

Q. Went through a kind of a—— (interrupted)

A. Went through a kind of a mock fire drill—just a matter of a few minutes, you know.

Q. And then what did you do?

A. Then we had a boat drill.

Q. Then did the whistle sound?

A. Well, at this time, I believe they just rang the bell. I don't believe they blow the whistle in port.

Q. And the boat you used was—— (interrupted)

A. Our outboard boat.

Q. Did all the crew get up there?

A. They all came up on the boat deck.

Q. They all came up on the boat deck. When you got up there, was the boat secured?

A. Yes, it was.

Q. Was it in its gripes?

A. It was griped in, that's right. It looked—— (interrupted)

Q. It looked as though it was completely griped in its position for sea, is that it?

A. (Affirmative nod.) Any time it is inside, swung up inside, it is ready. [31]

Plaintiff's Exhibit No. 4—(Continued)  
(Deposition of David E. R. Patterson.)

Q. Now, did you assign anyone to check the falls or the hooking? A. No.

Q. Why didn't you do that?

A. It is just not customary to be done, that is all, on this type of a—— (interrupted)

Q. Why not?

A. Well, to begin with, these hooks—this patent deal—this patent lock, it is impossible for anything to go wrong with it. It is hooked up, and that is all there is—that is, if that boat could come out, all you would ever have to do is to—it would hang, it would hang—if that boat would come unhooked in the davits with no gripes on it, it would go right down, I mean, the weight of that boat would just fall, that's all, the falls are holding the boat.

Q. Mr. Patterson, the crew that you had sent up there to secure the boat, would they handle the hooks in any way on securing—— (interrupted)

A. No.

Q. Why not?

A. They wouldn't handle anything, because everything is hooked up there. There is nothing to handle.

Q. Well, how do you swing the boat inboard to secure it?

A. The boat is never—you see, when I talked about it being griped in, the boat is already there. All these gripes are is [32] just what I told you—— (interrupted)

Q. Well, you are coming up on the side of the

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

ship, aren't you? How are you going to swing it over into the boat deck—the surface of the boat deck?

A. It is riding on rollers, and it just rides right up on these rollers all the way to the top.

Q. Oh, I see. I get it. In other words—— (interrupted)

A. In other words, there is no swinging—it is hanging on the falls and rides all the way up to the top.

Q. On the rollers, is that right?

A. That's right.

Q. And it is griped in, is that it then?

A. Well, as soon as it stops, all you have to do is to hook the gripes on. In other words, there is no swing or anything, it is just as she goes up, she is—— (interrupted)

Mr. Wood: What?

A. In other words, what I am trying to get at is he was trying to get we swing the boat in. The boat does it automatically, that's what I say.

Mr. Wood: You sometimes sort of drop your voice at the end of the sentence. I don't know if the Reporter is getting all of this.

Q. When you got up there for the boat drill, you gave the orders to let the boat go, is that correct? A. That's right. [33]

Q. And that was done by one of the ship's maintenance men, is that correct?

A. That's right.

Plaintiff's Exhibit No. 4—(Continued)  
(Deposition of David E. R. Patterson.)

Q. And you had two sailors in there, one apparently to check the plug, to see that it was in?

A. That's right.

Q. I see. And then, as she started going down and over the rollers, over the side of the ship, you saw that the rudder wasn't in there, is that it?

A. No, when the boat was—when the boat got down below the level of the boat deck.

Q. Yes.

A. You can't see it. It is impossible to see it from where you were, where you were standing, because, the boat was, as the boat goes by you——  
(interrupted)

Q. So there wasn't any rudder in it, so you asked the fellow that was operating the lowering to stop, is that it?     A. Yes, that's right.

Q. So he stopped at the cabin deck level?

A. That's right.

Q. Where was the rudder, by the way?

A. Well, the gear was entirely out of the boat. There was no provisions or anything in the boat for the annual inspection, it was to be inspected by the annual—by the inspectors. That was the reason for everything being out. [34]

Q. Did the boat stop right at the cabin deck level?     A. Yes.

Q. Did it hit against the side of the ship or catch any coaming or anything like that?

A. No.

Q. You are certain about that?



Plaintiff's Exhibit No. 4—(Continued)

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A. Well, not to my knowledge, I didn't see it hit.

Q. Then you went down and you were just about ready to climb on board?

A. I was just stepping into the boat.

Q. And you said before that happened, two of the ship's crew had already gotten into the boat?

A. Yes, that's right.

Q. Rather than going down the Jacob's ladder, is that right?      A. That's right.

Q. Were you going to lift the thing from the water with a full crew—from the water there, in the boat?      A. No.

Q. Why did they have to go down the Jacob's ladder?

A. You mean, why did the crew go down the Jacob's ladder?

Q. Yes.

A. Well, that is just the way it is, there is just too many. When you put—you know when you got the guys, it is much easier to go down the ladder and get in that way.

Q. And you were going to get the full complement for the boat [35] once it was in the water?

A. Once it was in the water, that's right.

Q. And then, after you had gone through that, then the men would have left the boat again by the Jacob's ladder rather than being hoisted up with the boat?      A. That's right.

Q. Now, at any time prior to the accident, had

Plaintiff's Exhibit No. 4—(Continued)  
(Deposition of David E. R. Patterson.)

anyone given you any information regarding the hooking set-up on the boat?     A. No; no.

Q. Had you ever received any complaints about it?     A. No, I had received no complaints.

Q. Do you know if any other crew members or any officer on the boat had?

A. Not to my knowledge.

Q. You didn't assign anyone to check the falls or anything?     A. I did not.

Q. Were the two men in the boat originally a man called Nelson and Hinricks?

A. Were they originally in the boat?

Q. Yes.

A. Yes, they were the two men that were assigned, in that one boat.

Q. Now, when you did stop the boat, as it was going down, in order to put the rudder in it, did you have to rehoist the boat in any way or did it stop at that level? [36]

A. Well, I didn't give any orders to that, I mean, I was going down anyway, in the boat—I was going to ride the boat down when it got even with the boat deck, but—I mean, when it got down and with the two men in the boat. When I saw that there was no rudder, why then I stopped, and—— (interrupted)

Q. And do you know whether the boat had been hoisted after you had stopped it in any way so as to be more—at a more convenient level to get into?

A. Yes, yes, it could have been put—I mean, it

Plaintiff's Exhibit No. 4—(Continued)

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would have been from up there. I didn't give any orders to that effect.

Q. But you don't know about that?

A. No, I could not say for sure. I mean, I don't remember it right now, let's put it that way.

Q. I believe you previously testified that when you saw the other steward get in the boat, just the—nobody in the boat, just the two men riding down, is that about right?      A. That's right.

Q. And the two guys had already got in there?

A. This Chinese fellow got in the boat, and was—it was while I was getting the rudder. I mean, I was not there.

Q. And you say it was the after end of the—  
(interrupted)

A. The after fall; the after fall.

Q. Was there a Coast Guard hearing on this casualty, Mr. Patterson?

A. Yes, there was. [37]

Q. Did you testify on this casualty at the Coast Guard hearing?      A. Yes.

Q. Did you give substantially the same testimony that you have given today to Mr. Wood?

A. Yes.

Q. Do you know exactly what instructions had been given to the ship repair people as far as testing the boat—do you know anything about that?

A. I did not read the specs, I mean.

Q. No, I see. You inspected the hooking device

Plaintiff's Exhibit No. 4—(Continued)

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afterwards, was there any actual fracture of any of the component parts?

A. No, the hook was in perfect shape. The ring was in perfect shape, and the block. There was no broken parts.

Q. Was there anyone in the boat that you know of after the weight test and after it had been hoisted up again and secured?

A. Did anybody ride the boat up, you say?

Q. Yes.            A. Not to my knowledge.

Q. How high would that lift be, do you remember? What would you say, it would be, from the water to the boat deck?

A. From the level of the boat deck or up to where it was secured?

Q. Up to where it is secured?

A. I would have to estimate, but I would say forty feet.

Q. And during that period of lift, the full [38] weight of the boat would be on the falls and the hooking device, is that correct?

A. That's right.

Q. Is there any movement of the falls or of the hooking devices as you swing the boat in to secure it, that you know of?            A. (Negative nod.)

Mr. Wood: The witness is giving a negative shaking of his head. You had better say no.

A. No.

Q. Was there any undue strain on the hooking

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

devices or anything, or the falls as you swing her inboard?

A. No. If I might explain again, there is no strain, you see. They are hanging on the falls, and all it is, she stays in the same position all the time. All it is is a big arm that works up all the way back up, and so there is no swing or anything like that. She just rides up.

Q. Except your falls gets narrower—shorter and shorter as they get close to the block?

A. Oh, yes, I mean, that's— (interrupted)

Q. When the boat is actually secured, is there much rope between the block and to where it is attached?

A. Rope? This is wire.

Q. Oh, wire—this is wire?

A. Yes. Is there much wire between?

Q. Is there much wire between? Yes. [39]

Mr. Wood: You mean how far apart are the two blocks?

Q. Yes, the two blocks—yes.

A. I would say a foot or two feet, or something like that.

Q. You mentioned the painter, now, will you explain that to me—see if I understand what you mean by a painter?

A. A painter is a line in the forward end of your boat, led forward and secured on the forward part of your vessel to keep the boat from drifting away when the boat is lowered and released from the falls.



Plaintiff's Exhibit No. 4—(Continued)  
(Deposition of David E. R. Patterson.)

Q. By the way, where is the surplus wire stored or kept?     A. On the drum.

Q. On the drum?

A. Always kept on the drum.

Q. As I understand it, the hooking device was repaired, or at least something done to it after this accident?     A. Yes.

Q. And what was that?

A. I couldn't tell you.

Q. You said something about the fingers were lengthened?

A. The fingers were lengthened, that's right, but I mean, I didn't—I didn't order any work done, that is not my job.

Q. Who was the man who was operating the mechanism for lowering the boat, was that a Mr. Bill Neeves (phonetic)?

A. Bill Neeves, that's right.

Q. What time had elapsed, would you say, Mr. Patterson, from [40] the time after you had seen the weight test and had gone away and gotten the men to help secure the boat, from the time you got back up to the boat deck for the boat drill?

A. Oh, half an hour, forty minutes. I will just have to go guess at that.

Q. Just one thing I want to ask—on the star-board side of the shell of the vessel, is there any attachments of any kind that protrude out beyond the side of the vessel, like the housing for the star-board gangway or anything?



Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

A. Yes, there is.

Q. Do you know whether the boat actually got caught up in any of these attachments on the side of the vessel?

A. I know the boat did not get hooked up in any of that. I know that for a fact.

Q. You say there was no catching or anything, the movement from the time—— (interrupted)

A. No.

Q. From the time that the boat left the boat deck?

A. The requirements for a boat of this type to be lowered, the vessel has to be listed over fifteen degrees—I mean, it still has to be working at a fifteen-degree list the opposite way.

Q. I don't quite understand that, Mr. Patterson.

A. In other words, say your ship was taking water, and she was listed over like this (indicating), laying over like that on the side. [41]

Q. Fifteen degrees?

A. That boat should still be able to go down, clear everything and go in the water.

Q. I see, you mean—— (interrupted)

Mr. Wood: You mean if she is listing fifteen degrees to port—— (interrupted)

A. To port, that's right, in other words, so the boat would not swing in and—— (interrupted)

Mr. Wood: And scrape against the side of the boat?

Plaintiff's Exhibit No. 4—(Continued)  
(Deposition of David E. R. Patterson.)

A. And scrape alongside the boat. I believe that is in the Coast Guard requirements.

Q. Is it your testimony that there was no catching on there in the lowering of the boat at this time?     A. No.

Mr. Roberts: I think that is all, Mr. Patterson.

Redirect Examination

Q. (By Mr. Wood): I have a couple of questions to clear up and you will be through in two or three minutes. You understand that it is a Coast Guard requirement that you can lower the boat without it scraping the side of the ship with a fifteen-degree opposite list?

A. That is the law—there is a law that the boat has to be able to be lowered to the water with a fifteen-degree list. [42]

Q. And in order that that can be accomplished, does that mean that the davits, when they are in the position for lowering the boat—— (interrupted)

A. Have to be far enough—— (interrupted)

Q. ——have to be far enough out—— (interrupted)

A. ——have to be far enough out—— (interrupted)

Q. ——so that the boat clears?

A. ——so that the boat won't lay alongside the ship.

Q. On this occasion, was there a fifteen-degree list?

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

A. Oh, Christ, no. It couldn't be. You never have any more than a one or two degree list unless it was—— (interrupted)

Q. Was there any noticeable list?

A. There was no list at all.

Q. Now, you said — Mr. Roberts asked you a question about when you looked at this hook and swivel link, after the accident, whether anything was broken, and you said it was in perfect condition?

A. Well, let me put it this way: As far as, he asked me about the hook—— (interrupted)

Mr. Roberts: Whether it was fractured or anything or any of the locking device?

A. No, the hook was all right.

Q. The hook itself was in perfect condition?

A. In perfect condition, I mean, from my observation as far as—— (interrupted) [43]

Q. Were the keepers—— (interrupted)

A. The keepers were not long enough, I could see that, but I mean, he asked me if there was any fractured or broken parts.

Mr. Roberts: That's right, and there wasn't any. Go ahead, Mr. Wood.

Mr. Wood: That is all. I just wanted to show that that perfect condition didn't mean that it was perfect.

A. I see that, but what I was trying to get at, you asked me whether there was anything broken as far as the hook was concerned.

Plaintiff's Exhibit No. 4—(Continued)  
(Deposition of David E. R. Patterson.)

Mr. Roberts: The hook, or any of the locking device, actually.

### Recross Examination

Q. (By Mr. Roberts): Let me put it this way, Mr. Patterson: That the locking device or whatever you want to call it, that is the entire part, the hook and the fingers and everything else, could have been used again to hook up on the lifeboat, couldn't they?     A. Yes.

Q. They were in the same condition then, as before the accident as after the accident, isn't that right?     A. Yes, and—— (interrupted)

Q. Except they were unhooked?

A. That's right.

Q. That's all I want to know. [44]

Mr. Wood: That's all. Now, Mr. Patterson, under the Federal rules and the rules of court, you would have the privilege of reading this deposition over and then signing it, or you have the privilege of waiving.

A. I would waive; I want to waive.

Mr. Roberts: I want one more question, Mr. Wood. This is on perpetuation. Are you on this grain run to the east right now, Mr. Patterson?

The Witness: Yes, I am.

Mr. Roberts: And of course, you are under charter, aren't you—bareboat charter?

The Witness: Bareboat charter, that's right.

Mr. Roberts: Is this a Maritime ship?

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

The Witness: It is a Maritime ship.

Mr. Roberts: How do you spell the name?

The Witness: Lahaina?

Mr. Roberts: Yes.

The Witness: L-a—I just went on that ship. The fact is, that is what the deal is. I just got on—I haven't been aboard her only about an hour or so.

Mr. Roberts: I see.

The Witness: I can't spell a Kanaka name. Lahaina, anyway.

Mr. Wood: It is a Hawaiian name. You can look it up. It is a Hawaiian name. [45]

Mr. Roberts: A Victory. And where are you going from Portland?

The Witness: To some port in Korea, which one—— (interrupted)

Mr. Roberts: Are you loading wheat here on the Columbia River?

The Witness: Yes, at Longview.

Mr. Roberts: Longview, and where is she berthed right now?

The Witness: She is berthed at Longview at the Wheat Elevator.

Mr. Roberts: And you are going directly from the Columbia River to the Far East?

The Witness: To the Far East, yes.

Mr. Roberts: Do you know when you are likely to be back?

The Witness: I can only assume that, if every-

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of David E. R. Patterson.)

thing went right—I mean, assuming that there was no cargo was coming back, and we went over and discharged, and come back, I would say thirty-five days, but I mean, that would be assuming we got good weather and nothing happened, but if we load, I mean, go some place else, I mean, with this cargo we got here, if we went over and come back without any, I would say a month or a month and half, forty-five days.

Mr. Roberts: You usually come back in ballast?

The Witness: That's right. [46]

Mr. Roberts: Do you know where—where is the crew signed on, do you know, here in Portland?

The Witness: They are signed on—they signed on at Longview. They are already signed on, although I am not signed on yet.

Mr. Roberts: And you don't know where you will come back to?

The Witness: No.

Mr. Roberts: Just presumably some port in the Pacific Coast?

The Witness: Presumably, yes.

Mr. Roberts: Okay. Thank you.

Mr. Wood: That is all.

(Witness excused and signature waived.)

Concluded: 10:30 o'clock a.m.

[Endorsed]: Filed April 26, 1957.



## PLAINTIFF'S EXHIBIT No. 5

Having been placed under oath, I state that my name is Peter P. Flovik, 226 - 3rd Ave. No., Seattle 9, Wash. Z 25887, 53 yrs. of age—married. Been going to sea for 25 yrs. S.O. this Java Mail in Jan. as A.B. Pd. off yesterday and am now on port pay roll. Up at 0530 to shift from Crown Mill to Term. 4—breakfast, then called at 0830—worked about deck until coffee time (1000). Then fire drill—boat drill followed—I'm in #2 boat crew—3rd Mate picked 2 men to go in #1 boat on boat deck. Nelson and Hinrich lowered boat to main deck a little below—then stopped it. As rule they have men go in at that point. I went in first—Chan followed me. Then they said no more in boat. I don't know who hollered but am almost certain it was 3rd. I don't know why they did not let more men in it. I was holding man rope. Had life jacket on. I was at 1st thwart forward of stern. Noticed link between block and pelican hook was not in place.

[Diagram showing what I observed.]

Think I was the first to see it. I told Hinrich. I told him to grab man rope. I hollered to 3rd Mate too. I said look at link. I don't think boat was moving then. Anyway, in 15 or 20 seconds, she let go at the aft fall. It let go aft—I know that. I did not check releasing gear. I know of no one attached to ship that checked it. I do know that shipyard people were working with boat. I did not see them lower and raise it, but did see them in it at #4 hatch. Bos'n told me to help gripe it in, which

Plaintiff's Exhibit No. 5—(Continued)

I did. I did not look at hook then. I did not get hurt. Chan and Nelson are still in hospital.

This statement consisting of 2 pages is true and correct and given at Portland, Ore. on 7 April, 1955. A copy has been given me.

/s/ PETER P. FLOVIK.

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PLAINTIFF'S EXHIBIT No. 7

FULL RELEASE

Know All Men by These Presents, That I, the undersigned, Benjamin E. Nelson, formerly a seaman on the SS Java Mail, in consideration of the payment to me of the sum of Thirty-five Thousand Dollars (\$35,000.00), by or on behalf of American Mail Line, Ltd., receipt whereof I do hereby acknowledge, Have Released and by these presents Do Hereby Release said American Mail Line, Ltd., its underwriters, the steamship Java Mail, her owners, charterers, agents, and officers, from any and all claims and liabilities, including, but without limitation, claims and liabilities for damages, compensation, maintenance and cure, transportation, wages to the end of the voyage, and any and all claims of whatsoever nature and kind, whether enumerated herein or not, growing out of or in any way connected with my service as a seaman on the SS Java Mail, and particularly the accident occurring on or about April 7th, 1955, when one of the lifeboats, in which I was, fell, resulting in

Plaintiff's Exhibit No. 7—(Continued)

the severing and subsequent amputation of my left leg and other serious injuries to my body.

This Release is in full and complete satisfaction for all of said injuries received from said accident, whether the consequences be now fully known to me or hereafter develop or be discovered. No promises of employment have been held out to me to get me to sign this Release, the sole consideration therefor being the payment of the aforesaid sum of \$35,000.00.

I have read this Release and had it explained to me by my attorney, and fully understand it.

Further, in consideration of said payment to me of said \$35,000.00, I hereby agree to dismiss as to American Mail Line, Ltd., with prejudice and without costs, the cause of action which I brought in the Circuit Court of the State of Oregon for the County of Multnomah on account of said injuries, entitled "Benjamin E. Nelson, Plaintiff, vs. American Mail Line, Ltd., a corporation, and Albina Engine & Machine Works, Inc., a corporation, Defendants, No. 225772".

In Witness Whereof, I have hereunto set my hand and seal to this and four other Identical Releases this 5th day of December, 1955.

[Seal] /s/ BENJAMIN E. NELSON.

Approved:

/s/ RICHARD R. CARNY,

Attorney for Benjamin E. Nelson.

Plaintiff's Exhibit No. 7—(Continued)

State of Oregon

County of Multnomah—ss.

On this 5th day of December, 1955, personally came before me, the undersigned Notary Public, the within named Benjamin E. Nelson, who declared to me that he executed the foregoing freely and voluntarily and understandingly for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official seal.

[Seal]     /s/ MABEL DOANE,  
Notary Public for Oregon. My commission expires  
June 5, 1958.

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PLAINTIFF'S EXHIBIT No. 8

FULL RELEASE OF ALL CLAIMS

Know All Men by These Presents that I, the undersigned, Chan Ting Yee, for and in consideration of the sum of Six Thousand Seven Hundred Fifty Dollars (\$6,750.00) to me paid, and receipt whereof I hereby acknowledge, and maintenance which I have received, Have Released, and by these presents Do Now Hereby Release American Mail Line, Ltd., the Steamship Java Mail, her owners, operators, agents, charterers, underwriters and officers, from any and all claims and liabilities for damages, compensation, maintenance, and all claims whatsoever growing out of or in any way connected with a injury which I received when I fell, with a lifeboat, from said vessel into the Willamette

Plaintiff's Exhibit No. 8—(Continued)

River at Portland, Oregon on or about April 7, 1955.

This Release is in full and complete settlement for all of said injuries, whether the consequences thereof be now fully known to me or later develop or be discovered. I fully understand this Release and sign it with the approval of my attorney, and I agree to dismiss with prejudice the action against American Mail Line, Ltd. now pending in the Circuit Court of the State of Oregon for the County of Multnomah in the case entitled Chan Ting Yee vs. American Mail Line, Ltd., et al., No. 225-773.

In Witness Whereof, I hereunto set my hand to this and three other identical instruments this 3rd day of July, 1956.

/s/ CHAN TING YEE.

/s/ MABEL DOANE,

Witness.

State of Oregon

County of Multnomah—ss.

Be It Remembered, that on this 3rd day of July, 1956, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Chan Ting Yee who is known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily.

In Testimony Whereof, I have hereunto set my

hand and official seal the day and year last above written.

[Seal]     /s/ MABEL DOANE,  
Notary Public for Oregon. My commission expires  
June 5, 1958.

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DEFENDANT'S EXHIBIT No. 10

[Title of District Court and Cause No. 8459.]

ANSWERS TO INTERROGATORIES PRO-  
POUNDED BY DEFENDANT TO PLAIN-  
TIF

1. For answer to the first interrogatory plaintiff says that it does not know. The installation, whenever it was, was before plaintiff's ownership of the vessel.

2. For answer to Interrogatory (2), the answer is No.

3. For answer to Interrogatory (3), plaintiff says that no repairs were made to the connecting swivel link before the boat fell. Afterwards both of the connecting links at each end of the boat were removed and new ones installed by defendant, Albina Engine & Machine Works, Inc.

4. For answer to Interrogatory (4), see above.

5. For answer to Interrogatory (5), plaintiff says that it does not know. Such installations were made before plaintiff owned the ship.

6. For answer to Interrogatory (6), plaintiff says No.



Defendant's Exhibit No. 10—(Continued)

7. For answer to Interrogatory (7), plaintiff says Yes. When, after the accident, defendant Albina Engine & Machine Works, Inc. installed a new link as stated above, they bent or altered the finger guards to suit the new links.

8. For answer to Interrogatory (8), see above.

9. For answer to Interrogatory (9), plaintiff says that it was not known until investigation was made after the accident that the connecting swivel link would disconnect from the hook without the release of the releasing gear.

10. For answer to Interrogatory (10), plaintiff says Yes, under conditions where the boat is resting in choppy water and the falls are extremely slack.

11. For answer to Interrogatory (11), plaintiff cannot speak for every member of a crew of approximately 50, but insofar as it knows, plaintiff says that nobody knew that the link would disconnect from the hook without the release.

12. For answer to Interrogatory (12), plaintiff says No.

Dated January 14th, 1957.

.....  
Attorneys for Plaintiff.

State of Oregon

County of Multnomah—ss.

I, C. R. Toole, being first duly sworn, state that I am Superintending Engineer of plaintiff, and that

Defendant's Exhibit No. 10—(Continued)  
the above answers to the Interrogatories are true  
as I verily believe.

/s/ C. R. TOOLE.

Subscribed and sworn to before me this 14th day  
of January, 1957.

[Seal]     /s/ FRANCES B. GEORGE,  
Notary Public for Oregon. My commission expires  
September 10, 1960.

Acknowledgment of Service Attached.

[Endorsed]: Filed January 25, 1957.

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DEFENDANT'S EXHIBIT No. 11

[Title of District Court and Cause No. 8459.]

DEPOSITION OF CLYDE R. TOOLE

Taken as an Adverse Party Witness in Behalf  
of Plaintiff.

Be It Remembered That, pursuant to stipulation  
of counsel for the respective parties, hereto an-  
nexed, the deposition of Clyde R. Toole was taken  
before Gordon R. Griffiths, a Notary Public for  
Oregon, on Monday, the 14th day of May, 1956, at  
the law offices of Wood, Matthiessen, Wood & Ta-  
tum, Yeon Building, Portland, Oregon, beginning  
at the hour of 4:00 p.m. [1]\*

Appearances: Mr. Erskine Wood, of Attorneys  
for Plaintiff. Mr. Arno H. Denecke, of Attorneys  
for Defendant.

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\* Page numbers appearing at top of page of Original Depo-  
sition.

Defendant's Exhibit No. 11—(Continued)

(Deposition of Clyde R. Toole.)

Stipulation

(At said time and place the following stipulation was entered into between the attorneys present in behalf of the respective parties:)

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys of record, that the deposition of Clyde R. Toole, an adverse party witness produced in behalf of Plaintiff, may be taken at this time and place before Gordon R. Griffiths, a Notary Public for Oregon and an Official Reporter of the above-entitled Court, and in shorthand by the said Gordon R. Griffiths.

It is further stipulated that said deposition, when fully transcribed, may be used on the trial of the above-entitled cause as by law provided; that all questions as to notice of time and place of taking the same are waived; that all objections as to the form of questions are waived unless made at the time of taking said deposition, and that all objections as to materiality, relevancy and competency of the questions and answers are reserved to the parties until the time of trial. [2]

CLYDE R. TOOLE

an adverse party witness produced in behalf of Plaintiff, having been first duly sworn by the Notary, was examined and testified as follows:

Direct Examination

Q. (By Mr. Denecke): Mr. Toole, would you

Defendant's Exhibit No. 11—(Continued)  
(Deposition of Clyde R. Toole.)

state exactly your position with American Mail Line?

A. This is not on the record. You mean at the time of this incident?

Q. That would be it.

A. Yes, Port Engineer.

Q. I take it you are now in a different position?

A. Yes.

Q. Were you the Port Engineer in Portland at the time?     A. Yes, in Portland.

Q. So we are straight, this happened in April, 1955.

A. Yes, at the time of this I was Port Engineer here.

Q. The work that was to be done by Albina generally was work on the "Annual," that is, preparing the ship to pass its annual inspection; am I correct in that?

A. Yes, annual inspection and voyage repairs were the work that was being accomplished.

Q. Tell me generally on procedure on an "Annual" do you or the people working for you, do you go over the vessel and determine generally what work has to be done to accomplish the [3] voyage repairs or to prepare it for its annual inspection?

A. We receive requisition for repairs from the vessel, the other side, which are screened, and from that specifications for repairs are prepared, and there it is known what is required for the "An-

Defendant's Exhibit No. 11—(Continued)

(Deposition of Clyde R. Toole.)

nual," pieces of machinery that must be opened up and equipment that must be opened up for survey by the Coast Guard at the time of the annual inspection. They were prepared in this instance, as in all instances, and bids were taken. As the Albina was the low bidder, the work was then awarded to Albina. During the course of an annual inspection there are some things that arise that cannot be foreseen such as repairs that are exposed at the time of opening up various portions of the equipment. There are certain things that a surveyor, the surveyor for the Coast Guard, might require to be accomplished which is given to the yards to accomplish at that time on a negotiated price basis. That is the way the repairs are put into hand and consummated.

Q. You mentioned right at the beginning—I didn't catch it too clearly—the "other side."

A. The other side?

Mr. Wood: He means the other side of the ocean, I think.

Mr. Denecke: That is what I was going to ask you.

The Witness: Oh, we will receive from a foreign port, our instructions to the officers on the ship are sent in a [4] repair requisition from the last port of call or very close to the last port of call, depending on their schedule, and, of course, if they know they are going to get into port at midnight and sail at 8:00 the next morning they



Defendant's Exhibit No. 11—(Continued)  
(Deposition of Clyde R. Toole.)

should have everything prepared at the port prior to that one, or they wouldn't have an opportunity to get that to the mail.

Q. I have three documents I am going to have marked as exhibits.

(Document, Specifications for Repairs, April 1, 1955, consisting of six pages, marked Defendant's Deposition Exhibit (Toole) 1 for Identification.)

(Document, Specifications for Repairs, April 7, 1955, consisting of nine pages, marked Defendant's Deposition Exhibit (Toole) 2 for Identification.)

(Document, Damage Repairs—Deck Department, April 7, 1955, marked Defendant's Deposition Exhibit (Toole) 3 for Identification.)

Q. (By Mr. Denecke): All three of these, Mr. Toole, and I am referring to Defendant's Exhibits 1, 2 and 3 for Identification, were delivered to me, and it is stated that they were [5] copies, as they are obviously, copies, and not originals of the various specifications for the work on the Java Mail, and I might point out, Mr. Wood, that on 1 there is something stamped on it that obviously—well, I doubt if it is on the original, but other than that I think that they are the same as the originals should be.

I hand you Defendant's Exhibit 1 for Identification and ask you if generally, without examining



Defendant's Exhibit No. 11—(Continued)

(Deposition of Clyde R. Toole.)

it in detail, and you might look at the last page here, too,—

A. Yes.

Q. —if that appears to be the specifications that refers—that is, let me put it this way—the first set of specifications on this job?

A. This would be the set that was bid on, 1. It covers the usual annual inspection items. I presume that it is. We have ours. I would have to compare it against ours to know exactly, to state that it is.

Q. Yes, I understand. Does it appear to be a copy of your signature? A. Yes.

Q. Looking still at Exhibit 1 here, and if you would like to spend a little time looking, the only reference I see to any lifeboats, and I will ask you to look a little more through it, is on Page 2, Item B-2?

A. Well, this Item 5 is our— [6]

Q. Excuse me, Item 5,—B-2 out there (indicating).

A. Yes, B-2 is the Class Number. That is our standard specification for annual inspection on lifeboats. Now, this weight testing that was requested later is not always accomplished. It is accomplished at the request of the Coast Guard.

Q. Just so we are certain, and if you care to look at it, Mr. Toole, you probably know these by memory practically. A. Yes.

Q. So far as you know, and you can examine

Defendant's Exhibit No. 11—(Continued)  
(Deposition of Clyde R. Toole.)

this if you care to, is that the only specification in Defendant's Exhibit 1 referring to the lifeboats?

(At this point in the taking of the deposition the witness was called away temporarily and returned, whereupon the following proceedings were had:)

Q. (By Mr. Denecke): You were going to look that over and see if there is anything else. I can tell you on the record I have looked it over, and I didn't see anything.

A. I don't believe there is. That is usually our only standard item. No, that is the only item in there pertaining to lifeboats.

Q. As I understand it from what you said, Mr. Toole, and from what I know, that at some time, I believe after the work for the "Annual" actually began, that the Coast Guard representative [7] stated he wanted a lifeboat test?

A. A weight test, yes.

Q. A weight test?

A. Yes, that is correct. They requested that we weight-test the lifeboats.

Q. Am I correct that that was sometime either just at the time work began or just after it began?

A. That is correct, during the course of the annual inspection.

Q. Then do you recall, did you talk to Dick Bailey of Albina and tell him that the Coast Guard wanted a lifeboat weight test?

A. Yes, and to do it.

Defendant's Exhibit No. 11—(Continued)

(Deposition of Clyde R. Toole.)

Q. To do it? A. Yes.

Q. Do you recall your conversation with him? What did you say, or was it, in effect, "The Coast Guard wants to weight-test the lifeboat. Would you do the necessary or take care of it?"

A. It could have been that, along those lines. I would not have told him in detail because such a thing is not necessary. He would have come to me with any request he had as he would run into any difficulty doing it, such as the use of winches to handle his weights with, if he cared to use winches. That is their prerogative to decide how they do it unless I think they are doing it inefficiently or in such a manner as is going [8] to cost us more money to have it accomplished the way they want to do it.

Q. What is done in a weight test?

A. Well, I can tell you in this instance, well, there are various ways that the weights can be handled, various types weights that can be used, but in this instance of boats being stripped of their equipment, their gear previously such as oars and a tiller and sail and other equipment that is standard requirement for lifeboats, it had been removed for examination of each piece by the Coast Guard. In this instance as the easiest way to put the weights in the boat they floated the boat. They moved the boat aft the No. 5—I believe it could have been No. 4, but I think it was No. 5 is the one they used in this instance—they brought sacks

Defendant's Exhibit No. 11—(Continued)  
(Deposition of Clyde R. Toole.)

of sand down on the brake, swung across the ship, and lowered it into the lifeboat with the ship's gear until they put the required amount of weight in the boat, and they floated the boat under the falls. They then hooked the boat onto the falls and raised it sufficiently high out of the water to hold it sufficiently long until the Coast Guard surveyor on the job was satisfied that everything was fine. During that time he would be looking at the boat, at the cables, at the hooks, at all gear pertaining to handling the lifeboat, and he then, I assume, told them that everything was all right, at which time they would have re-floated the boat and used the [9] gear again, removed the weights, floated the boat up under the gear again and then raised it up to the position from which they took it which was in a position where the boat rests at all times at sea.

Q. Would you require the weight testing——

A. I did not follow the job very closely, no.

Q. Is there anything to be done in the weight test by Albina or whoever else it is that is doing it, some other repair yard, other than placing the sand or whatever other weights they want to put in the boat and raising it or lowering it as the Coast Guard inspector directs?

A. They have all handling of the boat.

Mr. Wood: What was that answer?

(Last answer read.)

Mr. Wood: The boat and its related equipment?

Defendant's Exhibit No. 11—(Continued)

(Deposition of Clyde R. Toole.)

The Witness: That is what the job is being accomplished to do, an actual weight test of the boat itself to see that the boat itself is strong enough to support this required amount of weight free and clear of the water so you do not break the back of the boat, for instance, your plating, and the framing of the boat is strong enough to support that weight. It is also to test the hooks, cables, the sheaves, the brake on the lifeboat winch, and the motor, whether the motor is strong enough to raise the boat with this weight in it. [10]

Q. Do you know, does the Coast Guard normally—as long as you were not there—normally does the inspector from the Coast Guard tell the ship repairer what to do? By that I mean, “Raise it now; hold it there so long; lower it”?

A. The Coast Guard does not issue orders to the yard. They work every way possible to assist the yard. The yard may ask the Coast Guard inspector on the job, “Is this boat high enough out of the water?” And he would say “Yes,” or “No,” or “I would like to have it a little higher if possible,” words to that effect.

Q. Yes.

A. He does not assume authority to order the yard to do anything. If he had objections about the yard's work, the way the yard was accomplishing something, he could advise them not to do something. He would not order them not to because if anything is broken he could not carry the re-



Defendant's Exhibit No. 11—(Continued)  
(Deposition of Clyde R. Toole.)

sponsibility of it. He is not there as the owner's representative; he is not there as a representative of the yard; he is representing the Government. He is there to witness.

Q. Does he also in the course of the weight test inspect the things that you mentioned like the falls, sheaves?

A. Oh, yes; the davits, the falls, sheaves and davits. That is his job, also, to satisfy himself that the strength is there, that everything is in proper operating condition.

Q. If something is—if the Coast Guard finds that something [11] is not proper operating condition, do they call it to the owner's attention, then?

A. Yes; yes, if they see something that is not in proper operating condition they bring it to the owner's attention. The owner then orders the yard to make the repairs.

Q. There were some specifications——

A. He might—you know, men working together, the Coast Guard might tell a workman, "Well, I don't like that. That must be fixed." That, of course, is idle conversation.

Q. There were some specifications then made up, and by "made up" I mean mimeographed, I take it, that is what these are, or duplicated in some way for this lifeboat test in addition to some other matters. Now do you know whether or not these——



Defendant's Exhibit No. 11—(Continued)  
(Deposition of Clyde R. Toole.)

here, let me show you what I have in mind here.  
It is marked Defendant's Exhibit 2.

A. I assume this is a supplement, too.

Q. I think this is marked "Supplement 1."

A. Yes.

Q. Do you know, Mr. Toole, whether or not that supplement was furnished to Albina prior to the actual weight testing?

A. I doubt that it was; I doubt that it was.

Q. It is my understanding that the reason that this is prepared is that—not only this but these supplements that almost always accompany an "Annual" like this—is that they take care of it, put something down in writing so that the owner [12] in the repair yard will know at the end just what is being asked for and what has been done.

A. Yes, these are prepared from the full knowledge that we have of the vessel at the time of the preparation of the specs, as completely as possible.

As I said before, you start going through the equipment, the machinery, and we will find things that are hidden before, things that are not where they are visible where it can be sighted. If you would know that they are wrong or you might know something was wrong but the men on the ship would not know exactly what it was, nor could I tell until it was opened up. Say the inside of a pump, if the pump is not pumping properly you know something is wrong, but you don't know exactly what it is until we can get it opened and

Defendant's Exhibit No. 11—(Continued)  
(Deposition of Clyde R. Toole.)

see it. Then these repairs are ordered. It is what we call extras in the terms of ship repair. Then we wait until the job is all done. These are kept track of by the yard, by myself in this instance. You will notice in here that we have cancellations perhaps.

Q. Yes, I am sure there are there.

A. Additions, cancellations, it is alteration that we must make to these specifications on portions of it that arise during the time of accomplishing the repairs. We, as a rule, do not print these, do not run them out in our office until the job is completed. A running record of these are [13] kept both by the yard and by myself; when I authorize a yard to do the work I make my notes on it. The yard does, also. The yard knows what they have to do; they have to order the equipment and men to accomplish repairs with. They know what is wanted and have to order the men accordingly along with the materials.

Q. On the weight testing, then, did I understand it correctly, Mr. Toole, that you told Dick Bailey at some time before the weight testing was accomplished that the Coast Guard wanted the lifeboat to be weight-tested?

A. I couldn't say what my exact words were to him. I instructed him to proceed to accomplish the weight test for us, yes.

Q. Then at some time, depending upon when

Defendant's Exhibit No. 11—(Continued)

(Deposition of Clyde R. Toole.)

the job is finished, that instruction or an extra, in effect, as well as other extras——

A. Was verified so that they could put in for payment with this supplement.

Q. I hand you Defendant's Exhibit 3 for Identification which—I think I can shorten this—I understand, Mr. Toole, and see if I am correct, covers work to the lifeboat necessitated by its falling?

A. And associated equipment.

Q. And associated equipment?

A. Yes; that is correct. [14]

Q. And that this also, while it is dated April 7th, as well as Defendant's Exhibit 2 dated April 7th, was issued on or about the end of the job?

A. Yes.

Mr. Wood: Is that 3?

A. Yes, sir; this is 3.

Mr. Wood: Let us see what we are talking about.

A. That is repair work to the lifeboat after the damage was done (presenting document to Mr. Wood).

Q. (By Mr. Denecke): Do you recall, Mr. Toole, —maybe I have it here—was the job finished about the 10th of April?

A. I would not recall that.

Q. My best information is it started the 5th. Normally, how long would an "Annual" on this type of vessel take, or is there any such thing as a normal time?

A. Well, it is hard to say. It depends on the

Defendant's Exhibit No. 11—(Continued)  
(Deposition of Clyde R. Toole.)

work load the yard is carrying at the time the vessel will be in port. We have——

Q. Excuse me. To save time, the American Mail records here in Portland will show when the job was finished, I take it?

A. This gives the date of the vessel's arrival. We say, "Repairs to be completed before noon, Thursday, April 7th." That was our instructions at the time of the bidding. On the supplement you will notice "Work to be complete April 10th." [15]

Q. That would indicate, then, that probably she was to be finished, if everything went according to schedule, on the 10th?

A. Yes, everything should have been finished then. I don't know what the other one states.

(Document presented to the witness.)

I would say that it was completed, from what I can interpret from this now, this lifeboat work was supposed to have been accomplished here, but Albina did not finish the work here in the Portland area. We had to go to Longview to finish the work. The Coast Guard inspector rode down with me, as I recall it. We finished, as I recall, it was on a Saturday; I know it was midnight perhaps when we got away from the vessel after completion of repairs. It was very late in the evening.

Q. Mr. Toole, did you, or have someone, conduct any sort of an investigation as to what caused the lifeboat to fall?

A. I asked questions myself of the men on the

Defendant's Exhibit No. 11—(Continued)

(Deposition of Clyde R. Toole.)

job who were in the vicinity of the boat. We had attorneys. They took pictures immediately. I did not take anyone's story on it under oath or anything on that order, only I was aboard the vessel when it happened. I heard the—I heard it happen. I stepped out on deck immediately and got a fast story from several right there at the time.

Q. Did you order any repairs to be made which you believed [16] might correct a possible cause of the fall?

A. Under the circumstances of the way the boat was handled after the weight test was completed, there was no repairs to be made. I asked for no repairs that would correct anything on the—that might be, that might be in any way part of this.

Q. The statement has been made, and I think the charge was made—well, let's leave it this way, that at least one or more persons have stated that a possible cause was the fact that, I will call it a swivel, my terminology might be bad here——

A. Yes.

Q. ——even with the keeper down on the release gear could slip over the hook. Is my terminology good enough to make myself understood?

A. I know what you are trying to say, that the link could become disengaged without releasing the releasing gear. That could only occur if the weight of the boat were borne by the water or in some other manner. As long as the strain is on the cable, that is impossible, and the story that I, as I re-



Defendant's Exhibit No. 11—(Continued)  
(Deposition of Clyde R. Toole.)

ceived it, was that the strain of the boat was never off of the cable, off of the hook, from the time Albina men lifted the boat until the boat became disengaged on the after end. I am not speaking from first-hand knowledge. I am speaking of the story that was told me by the men who were there in the vicinity. [17]

Q. I will ask you your opinion, Mr. Toole, based upon the facts that you have, as to whether or not you arrived at any conclusion or have an opinion as to what caused the boat to fall?

A. My conclusion—

Mr. Wood: I think you are going a little far on that. He was not there. He didn't see it. I do not think you can ask his opinion about it.

Mr. Denecke: I am asking, Mr. Wood, because I am assuming without even proof that he would qualify as an expert.

Mr. Wood: Yes, I think he would qualify as an expert.

Mr. Denecke: Even though I realize that he was not looking at it when he fell there, but I think he would be entitled—I mean he is certainly qualified to testify as to that.

Mr. Wood: Yes, he is, but I do not know whether you are entitled to his expert opinion; but go ahead. I will withdraw the objection.

The Witness: I think, Mr. Wood, I have just answered the question already, that the hook, properly engaged, could not possibly disengage itself



Defendant's Exhibit No. 11—(Continued)

(Deposition of Clyde R. Toole.)

unless the releasing gear was released or the weight of the boat was carried by the water or in some other manner which is——

Q. (By Mr. Denecke): Because I am not an expert in this field, I am going to have to ask you this: By that statement [18] are you, in effect, saying that that could not have been the cause of the fall in this particular instance, then?

Mr. Wood: What could not have been?

The Witness: What could not have been?

Q. (By Mr. Denecke): The fact that it was possible, assuming it was possible without stating it was, for the ring to be released even though the keeper was down. I say "keeper was down" even though the releasing gear was fastened.

A. Well, as I just said——

Mr. Wood: I do not think that is a very clear question. It is not entirely clear to me.

The Witness: I don't quite understand it either.

Mr. Denecke: I will ask it over again to see if I can state it a little clearer.

Is it your opinion, then, Mr. Toole, that the cause of this particular fall or that this fall could not have been caused, the fall of this lifeboat could not have been caused by the fact, if it were a fact, that the ring or swivel, even with the keeper locked, if that word is correct, could have slipped over the hook?

A. I still don't quite understand. I don't know quite how to answer. As I said, once the link on

Defendant's Exhibit No. 11—(Continued)  
(Deposition of Clyde R. Toole.)

the end of the fall is properly hooked, properly placed on the hook of the lifeboat, it is impossible for it to become disengaged unless the boat is water-borne or the releasing gear is released. [19]

Q. I follow you then. I think I can clear this up with one more question.

A. Yes. In other words, the weight is hanging down all the time, and it can't possibly climb out.

Q. Now, then, in this instance I think it is an admitted fact that the lifeboat, after the sand was taken out, was not in the water then,—that is, not in the water until after the——

Mr. Wood: Yes, it was in the water after the sand was taken out.

The Witness: It was in the water at the time the sand was taken out.

Q. (By Mr. Denecke): At the time the sand was taken out?

A. It was in the water at the time the sand was removed.

Q. Right. From then it was raised again, and so far as we know——

A. After removal of the sand.

Q. After removal of the sand? A. Yes.

Q. Then it was in the process of being lowered when it fell or either in the process of being lowered or was hanging up there in the davits?

A. Stationary.

Q. Stationary?

Defendant's Exhibit No. 11—(Continued)

(Deposition of Clyde R. Toole.)

A. At the time; that is the way I understand that it was, yes. [20]

Q. Well, I am still not clear here. The thing I am trying to find out or get your advice on is, do you think it is possible that the ring could have been so improperly secured at the time the lifeboat was in the water and stayed improperly secured when the lifeboat was raised and held up there stationary, or as soon as the weight was put on, would it have slipped back into its correct place?

A. I would say that it was not securely placed. It was not placed in its proper position. It rose on a point during the time of raising the boat during the time of, between the time it was lifted out of the water after removal of the weights until it let go.

Q. Now, then, I think I understand what you said when you said you had already given your opinion.

A. Yes.

Q. In your opinion, then, is that what caused it to fall?

A. Being improperly attached, improperly attached; yes, correct.

Q. That is was, well, improperly attached?

A. Yes, that is the best word, I believe.

Q. I think that is all.

#### Cross Examination

Q. (By Mr. Wood): Let me see Exhibit 2. [21]  
(Document presented.)

Mr. Toole, an item on Page 2 of this Exhibit 2, I

Defendant's Exhibit No. 11—(Continued)  
(Deposition of Clyde R. Toole.)

know you are familiar with the weight test, port and starboard lifeboats and equipment, "Furnish weight, 165 pounds per person for 66 persons capacity, and accomplish weight test of each the Port and Starboard lifeboats, cables, davits, and so forth"?

A. Yes, sir.

Q. I take it that means, in fact it actually says it, it is to test all the equipment of the boat, is it not?

A. Yes, sir.

Q. Is that the normal kind of a test that is made? I have in mind that you said this was written out after you and Albina had had an understanding from your notes as to what was to be done?

A. Yes, sir.

Q. But I suppose that this was more or less a routine writing up of what you both understood would be done?

A. Yes, sir.

Q. Did you make notes on that, both of you?

A. Yes, he would have had it on his, I am sure. I wouldn't have had it on mine. At the finish of the repairs or toward the finish of the repairs we sit down somewhere and compare the notes to make sure that I have everything that has been accomplished and to make sure that he has accomplished everything [22] that I have instructed him to accomplish.

Q. Regardless of your notes, however, I imagine that tests of this kind are more or less routine, pretty well understood conventional kind of a test;

Defendant's Exhibit No. 11—(Continued)

(Deposition of Clyde R. Toole.)

are they not? Put it this way: When you ask a man in a repair yard to make a lifeboat test on weights, isn't it always understood he will test the equipment along with it?

A. A weight test; yes, sir. In this particular instance was one of the first water tests that had been accomplished here in Portland for quite some time. It was the first one on one of our vessels that was accomplished in the Portland area for quite some time. We have accomplished quite a few since.

Q. Would you think this was routine if afterwards it expressed the true understanding that both of you men had? A. Yes, sir.

Q. Before the work was done?

A. Yes, sir; Albina's representative thoroughly understood the work that was to be accomplished.

Mr. Wood: That is all.

#### Redirect Examination

Q. (By Mr. Denecke): Mr. Toole, in a weight test is it your understanding that the repair yard is to inspect all the equipment which [23] would support the boat? By that I mean the davits and the——

A. No, the yard does not necessarily have to inspect that. The yard is responsible for any portion of it that they handle, so that they handle it properly.

Mr. Wood: They do not handle davits, do they?

The Witness: No, sir; no, sir; the davits are not



Defendant's Exhibit No. 11—(Continued)  
(Deposition of Clyde R. Toole.)

touched by hand at all. The cables themselves are not attached by hand at all. It happens that the hook or the link is attached through a sheave to the cable.

Q. (By Mr. Denecke): Am I correct, then, that it is your belief that if those—it is your belief that if Albina failed in any respect here, and I am saying if they did, that their failure was to see that this ring was not properly secured?

A. Yes, sir.

Q. Not that they—your answer was “Yes,” I take it, as to that? Your answer was “Yes,” I take it, to the statement that I made there?

A. That their only failure on this job was to properly secure the boat to the——

Q. Secure this ring that we have been talking about?

A. Yes, properly hook the boat onto the fall after the test was accomplished.

Q. Do you know on this particular boat, Mr. Toole, with it resting on the water was it possible for the ring to become [24] disengaged even though the releasing gear was shut? A. It was, yes.

Q. It was? A. Yes.

Q. Am I correct, I do not know whether I am on this, I will have to ask you, that either at Longview or subsequent to the accident that was remedied?

A. It was partially remedied. That is, an attempt to remedy it was—well, that is not quite correct—the hooks were altered slightly, the fingers,



Defendant's Exhibit No. 11—(Continued)  
(Deposition of Clyde R. Toole.)

say, not the hooks, the fingers, were altered slightly, but, floating in a certain way with a certain amount of slack in the falls, the hook, the ring will still become disengaged from the hook.

Q. With the releasing gear shut?

A. Yes, without being touched.

Q. As the Port Engineer, do you consider it the duty of the repair yard in conducting a weight test—not conducting it, but trying it for the Coast Guard—to examine the ring, for example, and the hooks to see whether or not it is possible for the ring to become disengaged when it is resting in the water?

A. No, that is not necessarily part of their work. Their responsibility is to report anything they do see wrong to me.

Q. Do they have the duty when they are asked to do the weight test here, do they have the duty, do you consider, to [25] inspect the ring to see whether or not it would disengage?

A. Would disengage; no.

Mr. Denecke: That is all. Do you have any more questions, Mr. Wood?

#### Recross Examination

Q. (By Mr. Wood): Yes; if they saw, if the ring would disengage under conditions when it should not disengage, in other words a defect in the ring or the hook, would it be their duty to report it to you?      A. Yes, sir.

Defendant's Exhibit No. 11—(Continued)  
(Deposition of Clyde R. Toole.)

Q. Yes. In other words, if the swivel ring would disengage properly, when it should disengage, naturally they would accept it and would not report it?

A. Yes, sir.

Q. If, however, there was anything wrong with the hook—I was about to say the equipment, but we are talking about the hook and the link so we will talk about that—if they see anything wrong with that, wouldn't it be their duty to report it to you?     A. Yes, sir.

Q. And fix it?     A. Yes, sir.

Q. On your order? [26]

A. On my orders; yes, sir.

Mr. Wood: That is all.

#### Redirect Examination

Q. (By Mr. Denecke): That is also, and going on with Mr. Wood's question, that is also what the Coast Guard are to do, also, aren't they?

A. Yes.

Mr. Denecke: Do you have any further questions?

Mr. Wood: No.

Mr. Denecke: Mr. Toole, you have the right to read and examine and sign this deposition after it is transcribed, if you care to. If you desire to waive that after consulting with Mr. Wood, you can.

(Discussion off the record.)

The Witness: I will read it.

(Deposition concluded.) [27]

[Endorsed]: No. 15829. United States Court of Appeals for the Ninth Circuit. Albina Engine & Machine Works, Inc., a corporation, Appellant, vs. American Mail Line, Ltd., a corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed: December 6, 1957.

Docketed: December 26, 1957.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.



2. The Trial Court erred in finding that the defendant breached its contract with the plaintiff concerning the Java Mail and in finding that the defendant discovered that said equipment was dangerous (Finding of Fact 6).

3. The Trial Court erred in finding that the plaintiff did not know of and had no reason to suspect the existence of said defect (Finding of Fact 7).

4. The Trial Court erred in finding that the plaintiff was not negligent nor at fault for not inspecting the swivel and hook keepers before commencing the boat drill and was not otherwise negligent in any respect (Finding of Fact 9).

5. The Trial Court erred in concluding as a matter of law that the defendant breached its contract with the plaintiff and that judgment for the plaintiff and against the defendant should be entered.

The appellant hereby designates the part of the record which it thinks is necessary for the consideration of the points on which it intends to rely on appeal, such designation is as follows:

The complete record and all the proceedings and evidence in the said action which shall include:

Pleadings

Pre-trial order

Transcript of testimony

All exhibits except plaintiff's Exhibit 6

Findings of fact and conclusions of law and objections thereto

Judgment

Notice of appeal

Undertaking on appeal.

MAUTZ, SOUTHER, SPAULDING,  
DENECKE & KINSEY,

/s/ By ARNO H. DENECKE,  
Attorneys for Appellant.

Acknowledgment of Service Attached.

[Endorsed]: Filed Dec. 26, 1957. Paul P.  
O'Brien, Clerk.

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[Title of Court of Appeals and Cause.]

### STIPULATION

It is hereby stipulated by and between the respective parties hereto acting by and through their respective attorneys that the parties hereto request the Court to be relieved from printing or reducing appellee's (Plaintiff's) Exhibit 1, such exhibit being Rules and Regulations for Cargo and Miscellaneous Vessels, except that Pages 9 and 10 of said exhibit be printed.

It is further stipulated by and between the respective parties hereto acting by and through their respective attorneys that the parties hereto request



the Court to be relieved from printing or reproducing appellee's (plaintiff's) Exhibit 6, which was the statement of John J. Stene for United States Coast Guard, which is for impeachment only.

These stipulations are on the grounds and for the reason that said exhibits or the portions of said exhibits which the parties request that they be relieved from printing or reproducing are irrelevant and immaterial in the proceedings.

/s/ ARNO H. DENECKE,

Of Attorneys for Appellant.

/s/ ERSKINE WOOD,

Of Attorneys for Appellee.

[Endorsed]: Filed Dec. 26, 1957. Paul P. O'Brien, Clerk.

